No. 391 LIBRARY SUPREME COURT, U.S.

Office - Supreme Court, U.S.
FILED
AUG 20 1957
JOHN T. FEY, Clerk

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 24016

R. S. DASS BADHWAR and R. B. LACHHMANDASS MOHANLAL & SONS, LTD., composing the co-partnership doing business under the firm name and style of MULKRAJ BROTHERS and BADHWAR,

Plaintiffs-Appellants,

against

THE COLORADO FUEL AND IRON CORPORATION, ISBRANDTSEN COMPANY, INC.,

Defendants-Appellees,

and

AMERICAN-HAWAIIAN STEAMSHIP COMPANY,

Defendant-Appellee-Appellant.

(Civil Action No. 62-10)

APPENDIX TO BRIEF OF DEFENDANT-APPELLEE, ISBRANDTSEN COMPANY, INC.

On Appeal from the United States District Court for the Southern District of New York

Lord, Day & Lord,
Attorneys for Defendant-Appellee
Isbrandtsen Company, Inc.,
No. 25 Broadway,
New York 4, N. Y.

Woodson D. Scott,
of Counsel.

UNITED STATES COURT OF APPEALS
FEB 28 1957
SECOND CIRCUIT
A. DANIEL FUSARO, CLERK

INDEX

	PAGE
Relevant Docket Entries	1a
Complaint	3a
Answer of Defendant Isbrandtsen Company, Inc.	14a
Plaintiffs' Notice to Amend Complaint	32a
Defendant Isbrandtsen's Notice to Amend Answer, dated December 30, 1954	34a
Defendant Isbrandtsen's Notice to Amend Answer, dated January 4, 1955	36a
Transcript of Testimony	39a
Motions to Dismiss	73a

TESTIMONY

Plaintiffs' Witness:

Cyril F. Powers,	
Direct	49a
Cross	49a

Defendant's, Colorado Fuel and Iron Corp., Witness:

Frederick R. Becker, Jr.,	
Direct	53a
Cross	56a

Defendant's, Isbrandtsen Company, Inc., Witnesses:

Matthew S. Crinkley,	
Direct	60a
Siguard E. Simpson, Jr.,	
Direct	62a
Cross	66a
Re-direct	70a
Re-cross	72a

EXHIBITS

Plaintiffs' Exhibits:

2—(In Part) (Badhwar Deposition) 76a
Exhibit C, Letter dated November 27, 1950 .... 81a
3—(In Part) (Masse Deposition) 82a
Exhibit 2, Mate's Daily Report 97a
4—(In Part) (Dalton Deposition) 98a
Exhibit A, Port Log 102a
Exhibit 3, Letter dated September 2, 1948 ..... 108a
Exhibit F, Bill of Lading 144 ..... 117a
Exhibit H, Bill of Lading 145 ..... 125a
5—(In Part) (Kacocha Deposition) 128a
18—(In Part) (Smooth Deck Log) 134a

Defendant Isbrandtsen's Exhibits:

B—Actual Schedule, S. S. Hawaiian 136a
H—Letter, dated December 10, 1948 ..... 137a
I—Certificate of Loading 138a
J—Certificate of Loading Covering Specific Cargo .. 140a

United States Court of Appeals
FOR THE SECOND CIRCUIT

R. S. Dass Badhwar and R. B. Lachhmandass Mohanlal & Sons, Ltd., composing the co-partnership doing business under the firm name and style of Mulkraj Brothers and Badhwar,

Plaintiffs-Appellants,

against

The Colorado Fuel and Iron Corporation, Isbrandtsen Company, Inc.,

Defendants-Appellees,

and

American-Hawaiian Steamship Company,

Defendant-Appellee-Appellant.

Civil Action No. 62-10

Relevant Docket Entries.

Date	
Oct. 26-50	Filed Complaint and issued Summons
Nov. 1-50	Served R. F. Pierce, Treasurer of Isbrandtsen Co., Inc. on 10-27-50
Nov. 17-50	Filed Notice of Appearance (Isbrandtsen Co., Inc.)
Nov. 17-50	Filed Stipulation and Order extending time to answer to 12-6-50, Ryan, J.

Relevant Docket Entries.

Date	
Nov. 30-50	Filed Stipulation and Order for taking deposition of R. S. Dass Badhwar on 11-30-50, etc., Noonan, J.
Dec. 5-50	Filed Stipulation and Order extending time to answer of Isbrandtsen to 1-16-51, Sugarman, J.
Dec. 11-50	Filed Affidavit and Notice of Motion to limit examination of R. S. Dass Badhwar—Denied, except as indicated upon argument. So Ordered, Sugarman, J.
Jan. 11-51	Filed Answer of Isbrandtsen Co., Inc.
Mar. 6-51	Filed Isbrandtsen's answer to plaintiffs' request for admissions
Mar. 6-51	Filed Isbrandtsen's answer to cross claim of American-Hawaiian Steamship Company
Nov. 8-54	Filed Answer of Isbrandtsen to plaintiffs' request for admissions
Nov. 23-54	Filed plaintiff's request for admissions (Isbrandtsen Co. Inc.)
Jan. 3-55	Filed Notice of defendant Isbrandtsen Co. Inc. to amend answer upon trial
Jan. 5-55	Filed Notice of defendant Isbrandtsen Co. Inc. to amend answer upon trial
Sep. 12-55	Filed Opinion No. 22138 dismissing complaint and cross-claim. Submit judgment, Ryan, J.
Sep. 21-55	Filed Judgment of dismissal of complaint and of cross-claim of defendant American-Hawaiin against Isbrandtsen Co. Inc., Ryan, J. Judgment entered 9-21-55

Complaint.

(492)

Plaintiffs, by DUNN & ZUCKERMAN, Esqs., their attorneys, as and for their complaint herein, respectfully allege upon information and belief:

FOR A FIRST CAUSE OF ACTION, RELATING TO DEFENDANT, THE COLORADO FUEL AND IRON CORPORATION

1. That at all the times herein mentioned:

(a) Plaintiff R. S. Dass Badhwar was and is a citizen and resident of the Republic of India;

(b) Plaintiff R. B. Lachhmandass Mohanlal & Sons, Ltd. was and is a limited company or corporation organized under the laws of The United Provinces, a province of and in the Republic of India, and doing business in said province and country, and whose shareholders, directors and managing agents are citizens and residents of the Republic of India; and that said plaintiff and plaintiff Badhwar, as co-partners, did and do (493) compose the firm known as Mulkraj Brothers and Badhwar, a partnership registered under the laws of said province and doing business in said province and country;

(c) Defendant The Colorado Fuel and Iron Corporation (hereinafter referred to as "Colorado") was and is a corporation organized under the laws of the State of Colorado, United States of America, and doing business in the County, City and State of New York;

(d) Defendant Isbrandtsen Company, Inc. (hereinafter referred to as "Isbrandtsen") was and is a corporation organized under the laws of the State of New York, United States of America, and doing business in the County, City and State of New York;

(e) Defendant American-Hawaiian Steamship Company (hereinafter referred to as "American-Hawaiian") was and is a corporation organized under the laws of the State of New Jersey, United States of America, and doing business in the County, City and State of New York;

(f) The matter in controversy exceeds, exclusive of interest and costs, the sum of $3,000.00.

2. That during the month of August, 1948, the plaintiffs and the defendant Colorado entered into an agreement in writing, by the terms of which said defendant sold and plaintiffs purchased 2000 long tons of caustic soda, solid, 76% alkalinity N. Y. & L. Test, packed in steel drums, for the agreed price of 9½¢ per pound, C.I.F. Bombay, India; that said agreement required said defendant to ship the said caustic soda from a port in the Gulf of Mexico, U.S.A. to plaintiffs at Bombay, India not later than September 22, 1948; and that said agreement required plaintiffs to make payment to said defendant by irrevocable letter of credit in favor of said defendant payable in U. S. dollars.

3. That plaintiffs duly performed all the terms and conditions of the said agreement on their part.

(494) 4. That the defendant Colorado breached said agreement in that it failed to place the said caustic soda on a vessel or vessels which could be reasonably expected to travel over the usual course to Bombay, India and to make the passage from New Orleans, La. in the usual time, but on the contrary, on or about or between August 31, 1948 and September 3, 1948, said defendant caused said caustic soda to be placed on board a vessel that was then subject to a threatened or actual strike or strikes of the officers and crew against the owners thereof, and which vessel was then immobilized and the movement and uses

of which were affected by and subject to all of the concomitant factors and consequences of said strike situation; that said threatened or actual strikes were of an organized nature called and directed by labor unions which controlled operating personnel and crew members essential to the movement of said vessel and to its use as a common carrier, and which threatened or actual strike or strikes carried with them the support of other unions controlling amongst them other personnel essential to the operation of said vessel; all of which was well known, or should have been well known to said defendant Colorado.

5. That at the time when said defendant placed the caustic soda aboard said vessel, said defendant did not or could not reasonably expect the said vessel to depart in the ordinary and usual time and manner and to make the voyage from New Orleans, La., U.S.A., to Bombay, India in the period of time usual and ordinary for said trip; that at the time when said defendant Colorado placed the caustic soda upon said vessel, it knew or should have known that the said merchandise could not reasonably be expected to arrive at Bombay, India within the time contemplated by the parties to the aforesaid agreement.

6. That the said vessel did not depart from New Orleans, La. until on or about December 19, 1948, and did not (495) arrive at Bombay, India until on or about February 28, 1949; that the said caustic soda remained aboard the said vessel from its loading thereon until the vessel's arrival at Bombay, India, and was not delivered to plaintiffs at Bombay, India until some time thereafter; that the said caustic soda did not arrive at Bombay, India within the time contemplated by the said agreement between plaintiffs and said defendant, nor within a reasonable time.

7. That immediately upon placing the said caustic soda aboard said vessel, defendant Colorado drew upon plain-

tiffs' letters of credit and received therefrom the sum of $317,375.53.

8. That by reason of the foregoing, plaintiffs suffered damage in the amount of $138,058.30.

FOR A SECOND CAUSE OF ACTION, RELATING TO ALL THREE DEFENDANTS, JOINTLY AND IN THE ALTERNATIVE

9. Plaintiffs repeat, reiterate and reallege each and every allegation contained in the paragraphs designated "1" and "2" of this complaint with the same force and effect as if here fully set forth at length.

10. That in accordance with the said agreement, plaintiffs on or about August 18, 1948, duly established an irrevocable letter of credit in favor of defendant Colorado for the amount of $239,000.00, through the National City Bank of New York.

11. That the said letter of credit provided for shipment of caustic soda by defendant Colorado to plaintiffs at Bombay, India from a Gulf of Mexico port, U.S.A., not later than September 22, 1948.

12. That in accordance with the said agreement and pursuant to the request of defendant Colorado, plaintiffs on or (496) about August 25, 1948, duly established another irrevocable letter of credit in favor of said defendant for the amount of $186,600.00 through the National City Bank of New York.

13. That the said letter of credit provided for shipment of caustic soda by said defendant Colorado to plaintiffs

at Bombay, India from a Gulf of Mexico, U.S.A. port not later than October 10, 1948.

14. That at all times herein mentioned defendants Isbrandtsen and American-Hawaiian were and are engaged in business as common carriers for hire.

15. Upon information and belief, that during August 1948, defendant Isbrandtsen entered into an agreement with defendant American-Hawaiian whereby defendant Isbrandtsen, for a valuable consideration, chartered cargo space aboard the S. S. HAWAIIAN, a vessel owned and operated by defendant American-Hawaiian.

16. That defendants caused said S. S. HAWAIIAN to proceed to New Orleans where it docked at Westwego Wharf No. 3 on August 31, 1948 at approximately 12:30 P.M. and thereafter commenced loading caustic soda consigned by defendant Colorado to plaintiffs at Bombay, India.

17. That the master, mates, officers and crew of the said vessel, S. S. HAWAIIAN, were employed by and were under the direction and control of defendant American-Hawaiian.

18. That at the time when defendants Isbrandtsen and American-Hawaiian entered into their charter agreement and at the time when the said S. S. HAWAIIAN arrived at New Orleans, La., and the loading of the caustic soda was commenced, the ship's officers and the members of the ship's crew were laboring, performing their duties and rendering services pursuant to injunctions or mandates of United States District Courts made (497) and issued pursuant to the terms and provisions of acts of Congress, more specifically the "Labor Management Relations Act, 1947", popularly termed "The Taft-Hartley Act" (U.S.C.A., Title 29, Sec. 141 et seq.).

19. That the said injunctions or mandates were issued by the United States District Courts on or about June 14, 1948, to prevent the cessation of work by said ship's personnel and others under strikes threatened, declared, or existing, on the part of organized labor unions controlling said personnel and others, and were effectual and enforcible until 10:00 A. M. September 2, 1948, and their force and effect expired at said time.

20. That at the time when the loading of the said caustic soda aboard the said S. S. HAWAIIAN was commenced, the defendants, their agents, servants and employees well knew of the issuance of the said mandates or injunctions by the United States District Courts, their terms and conditions, and their time for expiration.

21. That at 10:00 A.M. on September 2, 1948 upon the expiration of said mandates or injunctions, two unions, including in their membership personnel essential to the movement and operation of said vessel as a common carrier, were on strike against the said owner thereof, without legal impediment to a work stoppage.

22. That on September 2, 1948 at approximately 10:30 A.M. officers and members of the crew of said S. S. HAWAIIAN, who were members of said striking unions, ceased the performance of their duties and left the ship, rendering the ship unable to be used as a carrier.

23. That the loading of caustic soda consigned to plaintiffs was continued after the time mentioned in the preceding paragraph.

(498) 24. That such loading was continued during the night of September 2nd-3rd, 1948.

25. That picket lines were established at approximately 10:00 A.M. on September 3, 1948 at which time all loading ceased by virtue of the co-operative action of labor unions in support of said strikes.

26. That under date of September 3, 1948 defendant Isbrandtsen issued to defendant Colorado an "on board bill of lading" for said merchandise consigned to plaintiffs, which Colorado immediately used to obtain from said bank the sum of $317,375.53 from the avails of said letters of credit; that Colorado paid Isbrandtsen freightage to Bombay on said caustic soda.

27. That defendants, their agents, servants, and employees had knowledge of the said strike situation and of the imminence of complete immobilization of the ship at the time they commenced loading the merchandise consigned to plaintiffs and prior thereto, and that they continued loading in spite of the actual existence of a strike on the part of officers and crew of said vessel and with full knowledge that the ship was without operating personnel and could not reasonably be expected to sail upon the completion of said loading and that such actions on their part were taken upon their own initiative, and without notifying or consulting plaintiffs, and in careless, negligent and wanton disregard of plaintiffs' rights and interests in the premises.

28. That by reason of the foregoing the said goods consigned to plaintiffs under their said contract with defendant Colorado remained inaccessible in said vessel which remained immobilized at New Orleans until December 9, 1948 when said strikes were terminated, and which remained an additional period (499) of time at said port and put in at one or more other ports or places to take or add cargo to replace shipments which had been can-

celled or recalled due to said immobilization and delay, and did not reach Bombay, India until on or about February 28, 1949, a date far subsequent to the date when said goods would reasonably be expected to arrive at Bombay.

29. That such conduct on the part of defendant Colorado was careless, negligent and in violation of its duties toward plaintiffs under said contract and its duties of reasonable care in the performance of contractual obligations, and said defendant was otherwise negligent in the premises.

30. That such conduct on the part of defendants Isbrandtsen and American-Hawaiian was careless, negligent and in violation of their duties as common carriers in the premises, in that they procured and furnished said ship under the circumstances aforestated, and actively participated in the loading aboard said strikebound ship of merchandise consigned to plaintiffs while they knew or should have known that said ship was or would be immobilized and unable to be used as a carrier of said merchandise under normal conditions, and in that defendant Isbrandtsen carelessly, negligently and wantonly issued an "on board bill of lading" to defendant Colorado which enabled the latter to draw upon the aforesaid letters of credit and obtain from the avails thereof the sum of $317,375.53, and in that the said Isbrandtsen and American-Hawaiian caused said vessel to delay still further in proceeding to Bombay after the termination of said strikes as aforestated, and in that said Isbrandtsen and American-Hawaiian failed to transport said merchandise to Bombay, India over the usual course and within a reasonable time after the receipt and acceptance thereof, and said defendants were otherwise negligent in the premises.

(500) 31. That by reason of the negligence of defendants as aforestated plaintiffs were damaged in the sum of $138,058.30.

FOR A THIRD CAUSE OF ACTION, RELATING TO ALL THREE DEFENDANTS JOINTLY AND IN THE ALTERNATIVE

32. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs designated "1" and "2", "10" to "26" inclusive, and "28" with the same force and effect as if here set forth at length.

33. That the aforestated actions on the part of defendants were taken wilfully, deliberately, and with knowledge of the aforestated facts and in pursuit of a common design to place said merchandise aboard the said immobilized vessel and to bring about the utterance of an "on board bill of lading" for the purpose of enabling defendant Colorado to draw upon said letters of credit as aforestated and to charge plaintiffs with the contract price and freightage of said merchandise and to avoid losses by any of the defendants under their respective contracts and obligations and for other purposes of the respective defendants and to fasten upon plaintiffs all losses and consequences of said actions, and were in fraud of the plaintiffs, whose funds in the sum of $317,375.53 were thus secured from the said bank by false pretenses, fraudulent concealment of the facts aforestated and fraudulent use of a document purporting to be a valid on board bill of lading to evidence a due and proper shipment of the merchandise contrary to the actual facts.

34. That by reason thereof plaintiffs suffered loss and damage in the sum of $138,058.30.

FOR A FOURTH CAUSE OF ACTION, RELATING TO DEFENDANTS ISBRANDTSEN COMPANY, INC. AND AMERICAN-HAWAIIAN STEAMSHIP COMPANY, JOINTLY AND IN THE ALTERNATIVE

(501) 35. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs designated

"1", "2" and "14" to "26" inclusive with the same force and effect as if here set forth at length.

36. That under date of September 3, 1948 defendant Isbrandtsen issued to defendant Colorado an "on board bill of lading" for said merchandise consigned to plaintiffs.

37. That thereafter defendants Isbrandtsen and American-Hawaiian held said merchandise consigned to plaintiffs on said immobilized vessel at New Orleans until some time in December, 1948; that when said vessel ceased to be immobilized said defendants caused her to remain in and about New Orleans for a considerable additional time and caused her to deviate from her route to Bombay to proceed to Tampa, Florida and other places all to procure additional cargo to replace shipments cancelled or recalled due to said immobilization and delay, or otherwise to serve the use and benefit of said defendants.

38. That said defendants, as aforestated, did place aboard their said vessel the said merchandise and did not transport it to Bombay, India by the usual course or within a reasonable time.

39. That by their conduct aforestated defendants did convert to their own use and benefit the said merchandise consigned to plaintiffs, to plaintiffs' damage in the sum of $138,058.30.

FOR A FIFTH CAUSE OF ACTION, AGAINST DEFENDANT COLORADO OR, IN THE ALTERNATIVE, ISBRANDTSEN AND AMERICAN-HAWAIIAN JOINTLY AND IN THE ALTERNATIVE

40. That defendant Colorado wilfully or negligently included in said shipment 526 damaged drums of caustic soda and defendants Isbrandtsen and American-Hawaiian accepted same, and all three caused same to be loaded aboard the aforesaid ship and (502) defendant Isbrandtsen

issued an on board bill of lading without exception and defendant Colorado collected full payment, C.I.F., for said portion of the shipment by drawing on said letters of credit as aforesaid.

41. In the alternative, that defendants Isbrandtsen and American-Hawaiian loaded, stowed, carried, transported, moved and handled 526 drums of said caustic soda in such hasty, improper, unskillful, unusual, careless and negligent manner that a great part of the contents thereof was lost, damaged or destroyed.

42. That by reason thereof plaintiffs suffered damage in the sum of $7,636.00.

WHEREFORE, plaintiffs demand judgment:

(I) For the sum of $138,058.30.

(a) Against defendant Colorado on the first three causes of action or any of them;

(b) Against defendants Isbrandtsen and American-Hawaiian or either of them, on the second, third and fourth causes of action or any of them.

(II) For the sum of $7,636.00 against defendants Colorado, Isbrandtsen and American-Hawaiian, or any of them, on the fifth cause of action.

(III) For appropriate interest and costs.

DUNN & ZUCKERMAN,
Attorneys for Plaintiffs.

Answer of Defendant Isbrandtsen Company, Inc.

(531)

Defendant Isbrandtsen Company, Inc. by Lord, Day & Lord, its attorneys, for its answer to the complaint herein, on information and belief:

REFERRING TO THE FIRST CAUSE OF ACTION, INCLUDING PARAGRAPHS "1" TO "8", INCLUSIVE, OF THE COMPLAINT:

1. Defendant Isbrandtsen Company, Inc. makes no answer to the First Cause of Action as same does not relate to this defendant.

ANSWERING THE SECOND CAUSE OF ACTION, INCLUDING PARAGRAPHS "9" TO "31", INCLUSIVE, OF THE COMPLAINT:

2. Denies that it has any knowledge or information sufficient to form a belief respecting the allegations contained in paragraphs "1(a)", "(b)", "(c)" and "(e)"; denies the allegations contained in paragraph "1(f)"; and denies (532) that it has any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "2", as said paragraphs are repeated, reiterated and re-alleged in paragraph "9" of the complaint.

3. Denies that it has any knowledge or information sufficient to form a belief respecting the allegations contained in paragraphs "10", "11", "12", "13", "18", "19" and "25" of the complaint.

4. Denies each and every allegation contained in paragraphs "21", "22", "27", "28", "29", "30" and "31" of the complaint.

5. Admits that on or about August 17, 1948, defendant Isbrandtsen Company, Inc. entered into a time charter agreement, on the usual Government form approved by the New York Produce Exchange, with defendant American-Hawaiian Steamship Company, for a valuable consideration, relating to the S.S. HAWAIIAN, a vessel at that time owned and operated by defendant American-Hawaiian Steamship Company, and, except as so admitted, denies the other allegations contained in paragraph "15" of the complaint.

6. Admits that the S.S. HAWAIIAN arrived at Westwego Wharf No. 3, New Orleans, Louisiana, on or about August 31, 1948, and that loading on board said vessel of caustic soda consigned to order of The National City Bank of New York, New York City, N. Y., or assigns, port of discharge from ship Bombay, India, was commenced on or about said date; and, except as so admitted, denies the other allegations contained in paragraph "16" of the complaint in (533) so far as same relate to defendant Isbrandtsen Company, Inc., and denies that it has any knowledge or information sufficient to form a belief as to the allegations of said paragraph relating to the other defendants.

7. Denies the allegations contained in paragraph "20" of the complaint in so far as same relate to defendant Isbrandtsen Company, Inc., and, except as so denied, denies that it has any knowledge or information sufficient to form

a belief as to the allegations of said paragraph relating to the other defendants.

8. Admits that the loading of caustic soda continued after 10:30 A. M., September 2, 1948, and during part of the night of September 2, 1948; and, except as so admitted, denies the other allegations contained in paragraphs "23" and "24" of the complaint.

9. Admits that defendant Isbrandtsen Company, Inc. issued two bills of lading dated September 3, 1948, Nos. 144 and 145, covering certain drums said to contain caustic soda consigned to order of The National City Bank of New York, New York City, N. Y., or assigns, port of discharge Bombay, India, shipper The Colorado Fuel & Iron Corporation; and, except as so admitted, denies the other allegations contained in paragraph "26" of the complaint.

ANSWERING THE THIRD CAUSE OF ACTION, INCLUDING PARAGRAPHS "32" TO "34", INCLUSIVE, OF THE COMPLAINT:

10. Answering paragraph "32" of the complaint, repeats, reiterates and re-alleges the admissions, denials (534) and allegations contained in paragraphs "2" to "9", inclusive, of this answer relating to paragraphs "1", "2", "10" to "26", inclusive, and "28" of the complaint, as repeated, reiterated and re-alleged in paragraph "32" of the complaint, with the same force and effect as if herein again set forth in full.

11. Denies each and every allegation contained in paragraphs "33" and "34" of the complaint.

Answer of Defendant Isbrandtsen Company, Inc.

ANSWERING THE FOURTH CAUSE OF ACTION, INCLUDING PARAGRAPHS "35" TO "39", INCLUSIVE, OF THE COMPLAINT:

12. Answering paragraph "35" of the complaint, repeats, reiterates and re-alleges the admissions, denials and allegations contained in paragraphs "2" to "9", inclusive, of this answer relating to paragraphs "1", "2", and "14" to "26", inclusive, of the complaint, as repeated, reiterated and re-alleged in paragraph "35" of the complaint, with the same force and effect as if herein again set forth in full.

13. Admits that defendant Isbrandtsen Company, Inc. issued two bills of lading dated September 3, 1948, Nos. 144 and 145, covering certain drums said to contain caustic soda consigned to order of The National City Bank of New York, New York City, N. Y., or assigns, port of discharge Bombay, India, shipper The Colorado Fuel & Iron Corporation, and, except as so admitted, denies the other allegations contained in paragraph "36" of the complaint.

14. Denies each and every allegation contained in paragraphs "37", "38" and "39" of the complaint.

(535) ANSWERING THE FIFTH CAUSE OF ACTION, INCLUDING PARAGRAPHS "40" TO "42", INCLUSIVE, OF THE COMPLAINT:

15. Denies the allegations relating to defendant Isbrandtsen Company, Inc. contained in paragraph "40" of the complaint, and denies that this defendant has any

knowledge or information sufficient to form a belief as to the allegations of said paragraph relating to the other defendants.

16. Denies each and every allegation contained in paragraphs "41" and "42" of the complaint.

FURTHER ANSWERING THE COMPLAINT, AND AS AND FOR A FIRST SEPARATE AND COMPLETE DEFENSE TO EACH OF THE SECOND, THIRD, FOURTH AND FIFTH CAUSES OF ACTION, DEFENDANT ISBRANDTSEN COMPANY, INC. ALLEGES ON INFORMATION AND BELIEF:

17. The Second, Third, Fourth and Fifth alleged causes of action each fails to state a claim against defendant Isbrandtsen Company, Inc. upon which relief can be granted.

FURTHER ANSWERING THE COMPLAINT, AND AS AND FOR A SECOND SEPARATE AND COMPLETE DEFENSE TO EACH OF THE SECOND, THIRD, FOURTH AND FIFTH CAUSES OF ACTION, DEFENDANT ISBRANDTSEN COMPANY, INC. ALLEGES ON INFORMATION AND BELIEF:

18. At the times mentioned in the complaint, the S.S. HAWAIIAN was a general ship engaged in the common carriage of goods by water for hire; said vessel was owned by defendant American-Hawaiian Steamship Company, and operated under a time charter agreement, on the usual Govern- (536) ment form approved by the New York

Produce Exchange, between defendant Isbrandtsen Company, Inc. and defendant American-Hawaiian Steamship Company. Said S.S. HAWAIIAN arrived at Westwego Wharf No. 3, New Orleans, Louisiana, on or about August 31, 1948.

19. On or about August 31, September 1 and September 2, 1948, at New Orleans, Louisiana, there were delivered to the S.S. HAWAIIAN, as common carrier, the shipments listed below, in apparent good order and condition, said to contain drums of caustic soda (quality, quantity, contents and value unknown), as follows:

Covered by B/L No. 144, dated September 3, 1948, showing freight prepaid, 3,217 Drums Caustic Soda 76% Solid (N. Y. & L.), with marks and numbers Mulkraj Lucknow via Bombay Nos. 1/3217 made in U. S. A., shipper The Colorado Fuel & Iron Corporation, consigned to order of The National City Bank of New York, New York City, N. Y., or assigns.

Covered by B/L No. 145, dated September 3, 1948, showing freight prepaid, 1,582 Drums Caustic Soda 76% Solid (N. Y. & L.), with marks and numbers Mulkraj Lucknow via Bombay Nos. 3218/4799, shipper The Colorado Fuel & Iron Corporation, consigned to order of The National City Bank of New York, New York City, N. Y., or assigns.

Said shipments to be carried by the S.S. HAWAIIAN to the port of Bombay, and there to be delivered as specified in said bills of lading, in consideration of certain freight charges then paid or agreed to be paid, and subject to all the terms, conditions and exceptions of said bills of lading (Nos. 144 and 145), issued in the name of defendant Isbrandtsen Company, Inc. as agents for the Master of

said vessel, by Hansen & Tidemann, Inc., and accepted by the shipper as the contract of carriage, to the originals of which this defendant refers for greater certainty as to their terms, conditions and exceptions, and same are made a part of (537) this, its answer.

20. Said bills of lading were issued in the regular course of business, after the goods referred to therein were on board said vessel, and the originals thereof were delivered by Hansen & Tidemann, Inc. to the shipper or its representative in regular course, according to the usual custom and practice in such matters.

21. The S.S. HAWAIIAN proceeded to Bombay in due course, arriving on or about February 25, 1949, where delivery of said shipments thereafter was made from said vessel to the Bombay Port Trust as provided by law and custom at the Port of Bombay, on or about March 6, 7, 8, 9 and 10, 1949, in accordance with the terms, conditions and exceptions of the covering bills of lading, and thereafter said shipments were received, accepted and retained by the consignees or plaintiffs as the persons authorized to receive, accept and retain same on the order of the consignees, or as their assigns, from the Bombay Port Trust, without any exception as to time, place, quantity, condition or otherwise, and without notice to or knowledge of this defendant of the claims alleged in the complaint or any part thereof.

22. Any delay which may have occurred in the sailing of said vessel from the Port of New Orleans, or from any other port, or any delay which may have occurred in the arrival of said vessel at the Port of Bombay or in the delivery of said goods in accordance with the terms,

(538) conditions and exceptions of said bills of lading, into the custody of the Bombay Port Trust, and thereafter by the Bombay Port Trust to plaintiffs, resulted from strikes, work stoppages or other labor difficulties, or from other causes beyond the control of this defendant, and for which this defendant was not and is not responsible, or liable to plaintiffs in this action.

23. By reason of the foregoing, if any loss or damage resulted to said goods, or to plaintiffs, this defendant is under no liability therefor.

FURTHER ANSWERING THE COMPLAINT, AND AS AND FOR A THIRD SEPARATE AND COMPLETE DEFENSE TO EACH OF THE SECOND, THIRD, FOURTH AND FIFTH CAUSES OF ACTION, DEFENDANT ISBRANDTSEN COMPANY, INC. ALLEGES ON INFORMATION AND BELIEF:

24. The United States Carriage of Goods by Sea Act, approved April 16, 1936, to which said shipment was subject, provides in Section 4(2) as follows:

"(2) Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from—

(a) Act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship;

* * *

(c) Perils, dangers, and accidents of the sea or other navigable waters;

(d) Act of God;

(e) Act of War;

* * *

(539) (g) Arrest or restraint of princes, rulers, or people—

(h) Quarantine restrictions;

(i) Act or omission of the shipper or owner of the goods, his agent or representative;

(j) Strikes or lockouts or stoppage or restraint of labor from whatever cause, whether partial or general; * * *

* * * *

(m) Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality, or vice of the goods;

(n) Insufficiency of packing;

(o) Insufficiency or inadequacy of marks;

(p) Latent defects not discoverable by due diligence; and

(q) Any other cause arising without the actual fault and privity of the carrier and without the fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage."

25. If any damage or loss resulted to any of said drums or the contents thereof during said voyage, or while in the custody of said vessel or of this defendant, or to plaintiffs in connection with said voyage, same was due to one or more of the causes above set forth, and by reason thereof this defendant is under no liability therefor.

Answer of Defendant Isbrandtsen Company, Inc.

FURTHER ANSWERING THE COMPLAINT, AND AS AND FOR A FOURTH SEPARATE AND COMPLETE DEFENSE TO EACH OF (540) THE SECOND, THIRD, FOURTH AND FIFTH CAUSES OF ACTION, DEFENDANT ISBRANDTSEN COMPANY, INC. ALLEGES ON INFORMATION AND BELIEF:

26. The bills of lading covering said shipments contained in paragraph "3" thereof the following terms, conditions and exceptions, to which said shipments were subject, to wit:

"3. The scope of voyage herein contracted for shall include usual or customary or advertised ports of call whether named in this contract or not, also ports in or out of the advertised, geographical, usual or ordinary route or order, even though in proceeding thereto the ship may sail beyond the port of discharge or in a direction contrary thereto or return to the original port, or depart from the direct or customary route, and includes all canals, straits and other waters. The ship may call at any port for the purposes of the current voyage or of a prior or subsequent voyage. The ship may omit calling at any port or ports whether scheduled or not, and may call at the same port more than once; may for matters occurring before loading the goods, known or unknown at the time of such loading and matters occurring after such loading, either with or without the goods or passengers on board, and before or after proceeding toward the port of discharge, adjust compasses, dry dock, with or without cargo aboard go on ways or to repair yards, shift berths, make trial trips or tests, take fuel or stores, remain in port, sail with or without pilots, tow and be towed, and save or attempt to save life or property; and all of the foregoing are included in the contract voyage."

27. By reason of the foregoing, if any loss or damage resulted to said goods or to plaintiffs, this defendant is under no liability therefor.

(541) FURTHER ANSWERING THE COMPLAINT, AND AS AND FOR A FIFTH SEPARATE AND COMPLETE DEFENSE TO EACH OF THE SECOND, THIRD, FOURTH AND FIFTH CAUSES OF ACTION, DEFENDANT ISBRANDTSEN COMPANY, INC. ALLEGES ON INFORMATION AND BELIEF:

28. Before and at the beginning of said voyage of the S.S. HAWAIIAN, due diligence was exercised to make the ship seaworthy, to properly man, equip and supply the ship, to make the holds and all other parts of the ship in which goods are carried fit and safe for their reception, carriage and preservation; and said goods were properly and carefully loaded, handled, stowed, carried, kept, cared for and discharged.

29. By reason of the foregoing, if any loss or damage arose or resulted to said goods, or to plaintiffs, this defendant is under no liability therefor.

FURTHER ANSWERING THE COMPLAINT, AND AS AND FOR A SIXTH SEPARATE AND COMPLETE DEFENSE TO THE FIFTH CAUSE OF ACTION, DEFENDANT ISBRANDTSEN COMPANY, INC., ALLEGES ON INFORMATION AND BELIEF:

30. The bills of lading covering said shipments contained in paragraph "1" thereof the following terms, conditions and exceptions, to which said shipments were subject, to wit:

"The Carrier shall not be liable in any capacity whatsoever for any delay, non-delivery or mis-delivery,

or loss of or damage to the goods occurring while the goods are not in the actual custody of the Carrier."

31. By reason of the foregoing, if any loss or damage resulted to said goods, same occurred, or resulted (542) from matters occurring, prior to loading same on board said ship or after discharge therefrom, while the goods were not in the actual custody of the carrier, and this defendant is under no liability therefor.

FURTHER ANSWERING THE COMPLAINT, AND AS AND FOR A SEVENTH SEPARATE AND COMPLETE DEFENSE TO THE FIFTH CAUSE OF ACTION, DEFENDANT ISBRANDTSEN COMPANY, INC. ALLEGES ON INFORMATION AND BELIEF:

32. The bills of lading covering said shipments contained in paragraph "12" thereof the following terms, conditions and exceptions, to which said shipments were subject, to wit:

"12. The port authorities are hereby authorized to grant a general order for discharging immediately upon arrival of the ship and the Carrier without giving notice either of arrival or discharge, may discharge the goods directly they come to hand, at or onto any wharf, craft or place that the Carrier may select, and continuously Sundays and holidays included, at all such hours by day or by night as the Carrier may determine no matter what the state of the weather or custom of the port may be. The Carrier shall not be liable in any respect whatsoever if heat or refrigeration or special cooling facilities shall not be furnished during loading or discharge or any part of the time that the goods are upon the wharf, craft, or other loading or discharging place. All lighterage and use of craft in discharging shall be at the risk and

expense of the goods. Landing and delivery charges and pier dues shall be at the expense of the goods unless included in the freight herein provided for. If the goods are not taken away by the consignee by the expiration of the next working day after the goods are at his disposal, the goods may at Carrier's option and subject to Carrier's lien, be sent to store or warehouse or be permitted to lie where landed, but always at the expense and (543) risk of the goods. The responsibility of the Carrier in any capacity shall altogether cease and the goods shall be considered to be delivered and at their own risk and expense in every respect when taken into the custody of customs or other authorities. The Carrier shall not be required to give any notification of disposition of the goods."

33. By reason of the foregoing, if any loss or damage resulted to said goods, same occurred, or resulted from matters occurring, while said goods were at their own expense and risk in every respect, and this defendant is under no liability therefor.

FURTHER ANSWERING THE COMPLAINT, AND AS AND FOR AN EIGHTH SEPARATE AND COMPLETE DEFENSE TO THE FIFTH CAUSE OF ACTION, DEFENDANT ISBRANDTSEN COMPANY, INC. ALLEGES ON INFORMATION AND BELIEF:

34. Plaintiffs failed to make any inventory of the alleged loss or damage to them or to said cargo at the Port of Bombay when same was discharged from said vessel, failed to request a proper inspection or joint survey thereof, failed to comply with the by-laws, rules and regulations of the Bombay Port Trust in such cases made and provided, and failed to comply with the custom at the Port of Bombay for an inventory of any such loss or

damage to be made and a proper inspection or joint survey thereof to be requested or made at or about the time of discharge of the cargo and before delivery to or receipt thereof by the consignees or their agents, representatives or assigns.

35. By reason of the foregoing, if any loss or damage resulted to said cargo, this defendant is under no (544) liability therefor.

FURTHER ANSWERING THE COMPLAINT, AND AS AND FOR A NINTH SEPARATE AND COMPLETE DEFENSE TO EACH OF THE SECOND, THIRD, FOURTH AND FIFTH CAUSES OF ACTION, DEFENDANT ISBRANDTSEN COMPANY, INC. ALLEGES ON INFORMATION AND BELIEF:

36. The bills of lading covering said shipments contained in paragraphs "18" and "19" thereof the following terms, conditions and exceptions, to which said shipments were subject, to wit:

"18. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the Carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, such removal shall be prima facie evidence of the delivery by the Carrier of the goods as described in the bill of lading. If the loss or damage is not apparent the notice must be given within three days of the delivery. The Carrier shall not be liable upon any claim for loss or damage unless written particulars of such claim shall be received by the Carrier within thirty days after receipt of the notice herein provided for.

"19. In any event the Carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after the delivery of the goods or the date when the goods should have been delivered. Suit shall not be deemed brought until jurisdiction shall have been obtained over the Carrier and/or the ship by service of process or by an agreement to appear."

37. Notice of loss or damage and the general nature of such loss or damage was not given in writing to (545) the carrier or its agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage; nor was any such notice given, respecting any loss or damage not apparent, within three days of the delivery; written particulars of the claim respecting said cargo were not received by the carrier within thirty days after receipt of notice of loss or damage as required by paragraph "18" of said bills of lading; and suit was not brought within one year after delivery of the goods or the date when the goods should have been delivered.

38. By reason of the foregoing, if any loss or damage resulted to said cargo or to plaintiffs, this defendant is under no liability therefor.

FURTHER ANSWERING THE COMPLAINT, AND AS AND FOR A TENTH SEPARATE AND COMPLETE DEFENSE TO EACH OF THE SECOND, THIRD AND FOURTH CAUSES OF ACTION, DEFENDANT ISBRANDTSEN COMPANY, INC. ALLEGES ON INFORMATION AND BELIEF:

39. Repeats, reiterates and re-alleges the allegations contained in paragraphs "18" to "20", inclusive, of this answer, with the same force and effect as if herein again set forth in full.

Answer of Defendant Isbrandtsen Company, Inc.

40. Said goods were delivered to said vessel at the Port of New Orleans on or about August 31, September 1 and September 2, 1948, and thereafter said vessel proceeded from the Port of New Orleans to the Port of Bombay without unreasonable delay, arriving at Bombay on or about February (546) 25, 1949.

41. Neither the consignees of said goods, nor plaintiffs, notified this defendant, either before said goods were received on board said vessel, or thereafter, that failure of said goods to arrive at Bombay before the date in February on which said vessel did arrive would cause to the consignees or to plaintiffs any damage. During the time said cargo was in the custody of this defendant or said vessel, this defendant received no request from the consignees or plaintiffs respecting the time of sailing of said vessel from New Orleans or any other port, the position of said vessel, or the date of arrival of said vessel at the Port of Bombay, or the sending of said cargo by any other vessel, and neither the consignees, nor plaintiffs, notified this defendant of any damage plaintiffs would sustain by reason of the time consumed in the carriage of said goods from the Port of New Orleans to the Port of Bombay in said vessel.

42. After the arrival of said vessel at Bombay on or about February 25, 1949 as aforesaid, the delivery of said goods thereafter was made from said vessel to the Bombay Port Trust on or about March 6, 7, 8, 9 and 10, 1949, in accordance with the terms, conditions and exceptions of the covering bills of lading, and thereafter said shipments were received, accepted and retained by plaintiffs, from the Bombay Port Trust, without any complaint respecting the time said goods arrived at Bombay or the time they were received by plaintiffs, and without notice to or knowledge of this defendant of the claims alleged in the complaint or any part thereof.

(547) 43. By reason of the foregoing, the plaintiffs waived any and all claims relating to alleged delay in the arrival of said goods at Bombay, or damages in connection therewith, and are estopped, and are barred by laches, from asserting same against this defendant in this action.

FURTHER ANSWERING THE COMPLAINT, AND AS AND FOR AN ELEVENTH SEPARATE AND PARTIAL DEFENSE TO THE FIFTH CAUSE OF ACTION, DEFENDANT ISBRANDTSEN COMPANY, INC. ALLEGES ON INFORMATION AND BELIEF:

44. The bills of lading covering said shipments contained in paragraph "17" thereof the following terms, conditions and exceptions, to which said shipments were subject, to wit:

"17. • • •

Whenever the value of the goods is less than $500 per package or other freight unit, their value in the calculation and adjustment of claims for which the Carrier may be liable shall for the purpose of avoiding uncertainties and difficulties in fixing value be deemed to be the invoice value, plus freight and insurance if paid, irrespective of whether any other value is greater or less."

45. The value of said goods was less than $500 per package or other freight unit.

46. By reason of the foregoing, if this defendant is liable for any of the loss or damage claimed in the Fifth Cause of Action alleged in the complaint, which it denies, such liability does not exceed in any event the invoice value, plus freight and insurance if paid.

Answer of Defendant Isbrandtsen Company, Inc.

WHEREFORE, defendant ISBRANDTSEN COMPANY, INC. (548) demands judgment dismissing the complaint as against this defendant, together with the costs and disbursements of this action.

Dated: January 10, 1951.

LORD, DAY & LORD,
Attorneys for Defendant
Isbrandtsen Company, Inc.

Plaintiffs' Notice to Amend Complaint.

(Served December 30, 1954)

(1452) Sirs:

PLEASE TAKE NOTICE that at the opening of trial herein, the plaintiffs will move to amend the complaint as follows:

(1) To amend paragraph "2" of the complaint by replacing the date "September 22, 1948" with the date "September 1, 1948".

(2) To eliminate from the complaint paragraphs "11" and "13".

(3) To amend paragraph "22" of the complaint by eliminating the words "at approximately 10:30 A. M. officers and".

(4) To amend paragraphs "8", "31", "34" and "39" of the complaint so that each such paragraph shall read as follows:

> "That the market price of said commodity in the Bombay market at or about the time when it might have been normally expected to arrive and be delivered to plaintiffs, on or before November 20, 1948, was 36 (1453) rupees per cwt. of 112 lbs; that the market price at the time of its actual arrival and receipt by plaintiffs at Bombay in March, 1949, was 25 rupees per cwt; that the landed cost of the commodity to plaintiffs, was approximately 47 rupees per cwt, consisting of the contract price of 34.32 rupees, customs duty of 10.8 rupees and demurrage and incidental charges of approximately 1.88 rupees; that of the said rate of customs duty paid by plaintiffs, 4.32 rupees represented an increase in rate which became effective January 1, 1949. That plaintiffs suffered loss and damage in the premises in the sum of $203,430.57 consisting of the

difference between the landed cost at which they received and took possession of the goods while in ignorance of the wrongful conduct complained of herein, and the market price then prevailing in Bombay, together with interest."

(5) To amend the figure of $138,058.30 in the "WHEREFORE" clause of the complaint to read "$203,430.57".

(6) To amend paragraph "42" of the complaint by adding thereto the following words after the figure of "$7,636.00", to wit: "being the landed cost thereof, of which $3,434.88 is alternative to a like sum embraced in the damages of $203,430.57 alleged in the preceding causes of action, and the remainder, or $4,201.12, is additional to such damages".

(7) To amend the "WHEREFORE" clause of the complaint by replacing the figure "$7636.00" with the following: "$7636.00, of which $3,434.88 is alternative to a like sum embraced in the aforestated damages of $203,430.57 and the remainder, or $4,201.12 is additional thereto".

(1454) Yours, etc.,

DUNN & ZUCKERMAN,
Attorneys for Plaintiffs.

To:

(Addressed to all Attorneys of Record.)

Defendant Isbrandtsen's Notice to Amend Answer, dated December 30, 1954.

(1444) Sirs:

PLEASE TAKE NOTICE that upon the trial of this action the defendant Isbrandtsen Company, Inc. will move to amend its answer by adding two new paragraphs No. 47 and No. 48 thereto as follows:

FURTHER ANSWERING THE COMPLAINT AND AS AND FOR A TWELFTH SEPARATE AND COMPLETE DEFENSE TO THE SECOND, THIRD, FOURTH AND FIFTH ALLEGED CAUSES OF ACTION DEFENDANT ISBRANDTSEN COMPANY, INC. ALLEGES ON INFORMATION AND BELIEF:

47. That the alleged claims set forth in the second, third, fourth and fifth causes of action arose out of matters occurring in or about September 1948. Said matters occurred, (1445) if at all, in the State of Louisiana where the S. S. HAWAIIAN was then lying afloat within the territorial waters of said State. Said claims, if any, are prescribed by one year under the Louisiana statutes, to wit, Articles 3536 and 3537 of the Louisiana Civil Code, then and now in full force and effect, applicable herein under the provisions of Section 13 of the New York Civil Practice Act, plaintiffs being non-residents of the State of New York.

FURTHER ANSWERING THE COMPLAINT AND AS AND FOR A THIRTEENTH SEPARATE AND COMPLETE DEFENSE TO THE SECOND, THIRD, FOURTH AND FIFTH ALLEGED CAUSES OF ACTION DEFENDANT ISBRANDTSEN COMPANY, INC. ALLEGES OF INFORMATION AND BELIEF:

48. That the alleged claims set forth in the second, third, fourth and fifth causes of action arose out of mat-

Defendant Isbandtsen's Notice to Amend Answer, dated December 30, 1954.

ters occurring in or about September 1948. Said matters occurred, if at all, in the State of Louisiana where the S. S. HAWAIIAN was then lying afloat within the territorial waters of said State. The merchandise referred to in the complaint was delivered to said S. S. HAWAIIAN, received on board said vessel, and bills of lading were issued therefor on or about September 3, 1948 at New Orleans, Louisiana. Said claims, if any, are prescribed by the lapse of two years from the date of shipment, under the Statutes of Louisiana, Acts 1914, No. 223 (R. S. 45; 1100), then and now in full force and effect, applicable herein under the provisions of Section 13 of the New York Civil (1446) Practice Act, plaintiffs being nonresidents of the State of New York.

Dated: December 30, 1954.

Yours, etc.,

LORD, DAY & LORD,
Attorneys for Defendant
Isbrandtsen Company, Inc.

To:

(Addressed to all Attorneys of Record.)

Defendant Isbrandtsen's Notice to Amend Answer, dated January 4, 1955.

(1447) Sirs:

Please take notice that upon the trial of this action the defendant Isbrandtsen Company, Inc. will move to amend its answer by adding five new paragraphs Nos. 49 to 53 inclusive thereto as follows:

Further answering the complaint and as and for a fourteenth separate and complete defense to each of the second, third, fourth and fifth alleged causes of action defendant Isbrandtsen Company, Inc. alleges on information and belief:

49. Repeats, reiterates and realleges the allegations contained in paragraphs 18 to 21 inclusive and 40 to 42 inclusive of defendant's answer herein dated January 10, 1951.

50. If it be found that the acceptance and transportation of said cargo or any of the matters alleged in the (1448) complaint constituted negligence, fraud, conversion or other fault of defendant Isbrandtsen Company, Inc., said defendant is under no liability therefor because the shipper and/or the consignees and/or the plaintiffs or their representatives also knew or had equal means of knowledge of the strike of the crew of said vessel or the imminence thereof and were contributorily negligent and participated and acquiesced in the shipment and carriage of said goods, and waived any objections thereto arising out of any of the matters or things alleged in the complaint.

Defendant Isbrandtsen's Notice to Amend Answer, dated January 4, 1955.

FURTHER ANSWERING THE COMPLAINT AND AS AND FOR A FIFTEENTH SEPARATE AND PARTIAL DEFENSE TO EACH OF THE SECOND, THIRD, FOURTH AND FIFTH ALLEGED CAUSES OF ACTION DEFENDANT ISBRANDTSEN COMPANY, INC. ALLEGES ON INFORMATION AND BELIEF:

51. The bills of lading covering said shipments contained in paragraph "17" thereof the following terms, conditions and exceptions, to which said shipments were subject, to wit:

"17. • • •

Whenever the value of the goods is less than $500 per package or other freight unit, their value in the calculation and adjustment of claims for which the Carrier may be liable shall for the purpose of avoiding uncertainties and difficulties in fixing value be deemed to be the invoice value, plus freight and insurance if paid, irrespective of whether any other value is greater or less."

52. The value of said goods was less than $500 per package or other freight unit.

(1449) 53. By reason of the foregoing if this defendant is liable for any of the damages claimed in the first, second, third, fourth and fifth causes of action, which it denies, such liability with respect to any part of said merchandise does not exceed in any event the invoice value, plus freight and insurance, if paid, of any part of said merchandise shipped in said vessel and lost or damaged and not received and accepted by the consignees or plaintiffs or their representatives. If plaintiffs are en-

Defendant Isbrandtsen's Notice to Amend Answer, dated January 4, 1955.

titled to any recovery, which this defendant denies, such recovery should be computed and adjusted and limited in accordance with the above quoted provisions of said bills of lading. In no event may the plaintiffs' damages exceed the limits of recovery provided in the United States Carriage of Goods by Sea Act and as stated in the terms, conditions and exceptions of the aforesaid bills of lading.

Dated: January 4, 1955.

Yours, etc.,

LORD, DAY & LORD,
Attorneys for Defendant
Isbrandtsen Company, Inc.

To:

(Addressed to all Attorneys of Record.)

Transcript of Testimony.

(66) Mr. Dunn: The plaintiff has a notice of intention to amend on December 30, 1954. Perhaps the briefest way would be to hand up the notice and then refer to it.

The Court: I understand that the plaintiff's motion is to amend the complaint as set forth in its notice of motion which was served upon the defendant on December 30, 1954.

Is there any objection from the defendants?

Mr. Bensel: Your Honor, in connection with the proposed amendments 1, 2 and 3, contained in the notice, the purported change is to change a date originally specified as September 22nd to read September 1st. That is under item 1 of his notice.

And then he wants to eliminate the allegations of paragraphs 11 and 13, which you will note are allegations reading:

> "The said letter of credit provided for shipment of caustic soda by defendant Colorado to plaintiff in Bombay, India, from a Gulf of Mexico port not later than September 22nd."

Paragraph 13 reads:

> "Said letter of credit provided for shipment of caustic soda by said defendant Colorado to (67) plaintiff in Bombay, India, from the Gulf of Mexico, U.S.A. not later than November 10, 1948."

Now, as your Honor heard in the opening this morning, the agreement alleged by the plaintiff, and the documents will establish it, had as a proviso that we were to furnish on board bills of lading evidencing shipment in one case on or before September 22nd, and the other on or before October 10th.

Now, frankly, I am surprised by this amendment. I don't know what he is driving at, and I think he ought to tell us whether or not he i claiming a different contract now than the one he alleged in his original complaint.

(68) Mr. Bensel: And I think we ought to be told whether or not he is claiming a different contract now than the one he alleged in his original complaint.

Mr. Dunn: If I may interrupt for a moment, your Honor, I think I can solve that by saying that I will eliminate that No. 2 request to amend. I don't consider it important. The purpose of it was because it was incorrectly stated there that the port was a Gulf of Mexico port. Actually, United States ports were provided for.

The Court: Do I understand, then, that you withdraw item No. 2 as set forth in your notice of motion to amend?

Mr. Dunn: Except that I would like to amend it to read "U. S. ports," instead of Gulf of Mexico ports to conform to the document.

The Court: Then you do not move to eliminate paragraphs 11 and 13 of the complaint in toto?

Mr. Dunn: That's right.

The Court: You simply move to amend such portions of those paragraphs 11 and 13 as refer to a Gulf port to read—

Mr. Dunn: U. S. ports.

The Court: —U. S. ports.

(69) Mr. Dunn: Yes, sir.

The Court: With that understanding, is there any objection from the defendants?

Mr. Bensel: May I just look at this? No.

Now, as to item 1, to change the date September 28 to September 1. Frankly, I don't know what theory is changing here. He has got a contract which he alleges provides for—

The Court: Irrespective of what he is alleging, do you object to the amendment as he now moves?

Mr. Bensel: I would be forced to plead surprise unless I know the theory or the purpose for it.

The Court: Are you pleading surprise with reference to any of these amendments on which you have had notice since December 30th? I would simply have to declare a mistrial.

Mr. Bensel: I don't want that.

The Court: Do you claim surprise with reference to any of these amendments?

Mr. Bensel: I would like to withhold that statement until I ascertain from counsel what the (70) purport of that amendment is in so far as his cause of action is concerned. I think I am entitled to know what his theory is so that I can adequately prepare for it.

The Court: All right. Do you want to make a statement?

Mr. Dunn: I am quite willing to make such an explanation.

There is no change whatever in the basic proofs or the basic facts in this case. There is no intention to add any new facts or to change the original facts on which the complaint was based. All we have is a question of a legal interpretation of the effect of this contract between the parties.

The purpose of the amendment is to preserve the plaintiffs' right to claim that the legal effect of the contract as made was that the defendant Colorado bound itself to make shipment not later than September 1st.

In the event that the Court finds otherwise, it may find that the contract was that a shipment might be deferred until September 22nd or October 10th. In other words, I claim that the contract as arrived at by cables and direct communications was (71) designed to create an obligation

to ship by September 1st, and to negotiate the documents not later than the times mentioned in the letters of credit.

However, we are concerned only with what the Court finds to be the shipping date. It is not too important. I don't think it surprises anybody because it has been argued. The facts constituting it have been in the case since they were ascertained by depositions and stipulations of documents.

Mr. Bensel: Your Honor, the statement of counsel has served its purpose. He stated he has no new or additional evidence other than what appears in the documents. That is what I wanted to know.

I don't claim surprise. I don't oppose it.

The Court: All right. How about the other amendments? Have you any objection to any of the amendments?

(No response.)

The Court: There being no objection, the amendments moved for by the plaintiff are granted.

Mr. Bensel: As far as amendments 4, 5, 6 and 7, which go to his theory of damages, I assume it (72) is not necessary for us to argue whether that theory is correct or not.

The Court: No, the rules provide that the plaintiff shall be awarded such damages as the facts and evidence in the law entitle him to receive, irrespective of the nature of his prayer.

Mr. Bensel: And I assume, further, in view of these amendments we are deemed to have been denied the allegation as amended?

The Court: Yes.

Have you any more motions to make?

Mr. Dunn: I have none.

The Court: Now, the defendants indicated that they have some motions to make.

Wait a minute, first Colorado.

Colloquy.

Mr. Bensel: Well, I would suggest that counsel for Isbrandtsen, since they were the ones who first noticed this amendment, might speak. We just took the same amendments they did.

Mr. Scott: As I understand it, the amendments which have been made to the complaint are deemed to be denied on behalf of all the defendants.

The Court: All defendants, yes, sir.

Have you any motion to make yourself?

(73) Mr. Scott: Yes, sir.

The Court: Let me hear it.

Mr. Scott: Defendant Isbrandtsen has served two notices of intention to amend, one dated December 30, 1954, and one dated January 4, 1955, to add paragraphs 47 to 53, inclusive, to the answer of this defendant. Those are the amendments I mentioned this morning in my opening statement. I request your Honor to allow those amendments.

The originals have been filed here, and I hand you copies, if you wish to have them (handing to Court).

The Court: Do I understand that this motion is joined in by the other defendants as well?

Mr. Scott: They have served similar notice, yes, sir, with one exception: Colorado served a notice on only one of those amendments because, it not being a carrier, one of the statutes—

Mr. Bensel: We pleaded, your Honor, in our proposed notice, which is on file here, the one-year Louisiana statute similar to—

The Court: Is there any objection by the Plaintiffs to these motions to move to amend the answers made by the respective defendants as set forth in their (74) notice of motion to amend?

Mr. Bensel: You mean by the plaintiffs?

Colloquy.

The Court: By the plaintiffs, yes. Has the plaintiff any objection?

Mr. Dunn: With respect to Isbrandtsen's notice adding paragraphs 49, 50, et sequitur, to their answer—I think that is the best way to identify it—the plaintiff has no objection. That is the notice dated January 4, 1950.

The Court: How about the other notice dated December 30th?

Mr. Dunn: With respect to the notice dated December 30th concerning the pleading in effect of two different law statutes of limitations, and the similar motion made by American-Hawaiian, and the partially similar motion made by Colorado, the plaintiff asks that if that amendment be granted, it should only be on certain conditions for this reason:

The notice to amend, of course, was for amendment at the trial and was served a number of years after the original answers. It attempts to set up now as an additional defense something that is not on the merits, and which in effect accuses the plaintiff of laches of a very short period, and overlooks a (75) similar laches on the part of the defendants extending over several years.

Now, I am quite aware, your Honor, and I don't want to make an issue of it, of the fact that the Court is disposed to grant such amendments, and that the late Judge Hulbert has stated that he is not going to penalize litigants for any misconception of the statute of limitations made by counsel.

However, we have gone through the proofs in this case during those intervening years. We have had testimony taken in New Orleans at the plaintiffs' expense. All counsel—

The Court: Are you pleading surprise? Do you oppose this amendment on the ground of surprise?

Colloquy.

Mr. Dunn: I ask for its being granted on condition. In other words, I am not opposing the Court's granting the amendment.

The Court: What condition do you ask be imposed?

Mr. Dunn: One condition is that if the defendants are going to bring in any expert to prove the law of Louisiana, that they should stand the expense of any similar expert that the plaintiff has to bring in. The reason for that is that—

(76) The Court: They are asking me to take judicial notice of the laws of the State of Louisiana. They say, or they said in the openihg, the opening by Isbrandtsen's counsel, that it is purely statutory and codified, and I don't see the need for any speed.

Mr. Dunn: If they do not intend to bring in the experts, there is no point to this condition I am asking for.

The Court: Do you intend to have any expert here? I am going to take judicial notice of it. What do I need an expert on the law of Louisiana for?

Mr. Scott: I anticipated we would do whatever your Honor wishes.

The Court: I don't need an expert on the law.

Mr. Scott: I didn't think you did, Judge, but I have consulted one in the event you do and will do whatever you wish.

The Court: I don't need any expert.

Mr. Dunn: Then that is irrelevant.

The Court: If I decide that we should have an expert, they will pay a reasonable fee for your (77) expert, period.

Mr. Scott: Of course I can't consent to that.

The Court: A reasonable fee, $150; $150 apiece.

Now, what else?

Mr. Dunn: The other condition is that this issue which has been injected into the case at the last moment may turn whether we get to full consideration of it on questions of

whether the pleadings are ex contractu, or ex delicto, or whether they are in various other forms with which this Court, in this day and age, is not generally concerned.

In the event that the basic facts, the pleading of the basic facts should be changed in some respect to meet this statute as a result of its now being brought into the case, the plaintiff, I suggest, should have an opportunity, later on, to do that upon reasonable application.

The Court: The rules provide that pleadings shall be deemed amended to conform with the proof produced on the trial.

Mr. Dunn: Yes.

(78) The Court: Now to determine the nature of the action I apply federal law.

To determine what statute or what period of prescription or limitation applies to an action the nature of which I determine that this action is by the application of federal law, I apply the state law.

Do you understand the distinction that I have made?

Mr. Dunn: I do, your Honor.

The Court: All right. Any other conditions that you have, sir?

Mr. Dunn: With respect to that, I take it that if any amendment becomes necessary—

The Court: If any amendment becomes necessary, it will be deemed to have been made in compliance with the rules, that the pleadings will be deemed to have been amended to conform to the proof.

Mr. Dunn: Yes, sir.

The Court: Are there any other conditions?

Mr. Dunn: None.

The Court: Does the plaintiff claim surprise?

Mr. Dunn: We don't want any adjournment.

(79) The Court: Does the plaintiff claim surprise?

Mr. Dunn: No, sir.

Colloquy.

The Court: Then the amendments are granted as moved for by the various defendants.

Any more motions?

(No response.)

The Court: Let me ask one or two questions:

Is there any dispute here about the truth of the allegation contained in the first paragraph of the complaint, the jurisdiction allegation?

Will it be conceded that those are admitted and that this court has jurisdiction?

How about you gentlemen? Do the defendants concede that the court has jurisdiction of the subject matter and the persons of the defendants?

Mr. Tillinghast: I see no reason to object to it.

The Court: Do you concede it?

Mr. Tillinghast: Yes.

The Court: All defendants concede it.

Now, No. 2: With respect to the contract that the plaintiffs claim they had with Colorado, is there any dispute between the plaintiffs and (80) Colorado that if the Court is to determine whether or not a contract was in fact made, the Court is to apply the law of the State of New York.

Mr. Dunn: The plaintiff agrees.

Mr. Bensel: Pardon me, your Honor; I didn't get that. I was looking at this pleading.

The Court: To determine whether or not any contract was in fact made by the plaintiffs and the defendant Colorado I am to apply the law of the State of New York.

Mr. Bensel: Do you want to hear from the plaintiffs or the defendant?

The Court: I have heard from the plaintiffs. He says yes.

Mr. Bensel: The answer is yes for the defendant Colorado.

The Court: All right. And that if I find that any contract was made between the plaintiffs and the defendant Colorado, it is conceded by both sides that such contract was made in the State of New York and the construction of that contract is to be determined by the laws of the State of New York?

Mr. Dunn: I so concede with respect to the construction of the contract, your Honor.

(81) The Court: And the place of the contract: If I find that a contract was made and that it was made in New York, therefore it is to be construed according to the law?

Mr. Dunn: Yes, we concede that.

The Court: The plaintiffs concede that?

Mr. Dunn: Yes.

The Court: How about the defendant Colorado?

Mr. Bensel: We concede that.

The Court: All right.

Now let me hear the proof.

* * * * * * * *

(82) Mr. Dunn: I offer in evidence a stipulation of facts and documents which names documents annexed to it, documents designated as Schedules A through BI and ask—

The Court: This stipulation, as I see it, is only signed on behalf of the defendant Colorado.

(83) Mr. Dunn: That is true.

The Court: Do the other defendants want to sign it now?

Mr. Tillinghast: The defendant American-Hawaiian has no knowledge or interest in the exhibits attached to that stipulation, Judge Ryan. Those pertain to the sale and we knew nothing of it and I don't see how we could admit or be bound by it.

The Court: I am not asking you to be bound by them. I simply want to know whether you will concede the genuineness of these documents, reserving your right to object only to their relevancy or materiality with respect to your client.

Mr. Tillinghast: Yes, we can do that.

The Court: You do that?

Mr. Tillinghast: Yes.

The Court: How about you on behalf of Isbrandtsen?

Mr. Scott: I can do the same thing, your Honor, and the bills of lading are in there. I might say that we have already admitted those.

* * * * * * * *

(174) Cyril F. Powers, called as a witness by plaintiffs, being first duly sworn, testified as follows:

Direct Examination by Mr. Dunn:

Q. Mr. Powers, are you employed by Isbrandtsen Company, Inc.? A. Yes.

Q. What is your assignment there? A. Chief adjuster.

* * * * * * * *

(177) Cross Examination by Mr. Scott:

Q. I refer now to the booking agreement, a (178) copy of which is included as an exhibit to the New Orleans depositions, which have already been offered in evidence, and direct the witness' attention to this copy of that agreement and ask the witness whether the SS Hawaiian was substituted?

Cyril F. Powers—For Plaintiffs—Cross.

The Court: Is that in the agreement between Colorado and Isbrandtsen providing for the transport of the cargo?

Mr. Scott: Colorado and the agents of Isbrandtsen at New Orleans who handled the matter.

By Mr. Scott:

Q. I ask you whether the Hawaiian was substituted for the vessel named in that agreement pursuant to the provisions for substitution in that agreement? A. Yes, sir.

Q. Was that substitution made on or about August 17, 1948? A. Yes, sir.

. . . . . .

(181) Q. Did you prepare from the records of Isbrandtsen the paper which I now show you (handing to witness)? A. Yes, sir.

Q. What does that show? A. That shows the actual itinerary of the vessel.

Mr. Scott: I offer it in evidence.

Mr. Bensel: Is that the Hawaiian?

Mr. Scott: Yes, sir.

Mr. Dunn: I do not object to the document going in your Honor, but I wish to point out that at least in one instance I see it is not exactly correct as to a date. This same information has been put in the record by the masters of the vessels by referring to the log and I don't think it is material. That is August 30, 1948, for arrival at New Orleans. The date was actually the 31st.

The Court: I don't know whether the log (182) covers the period of the entire voyage or whether it doesn't. If the log does cover it, this exhibit is unnecessary, although it might be of aid

to the Court in locating the dates if an examination of the log is necessary. But the construction of this exhibit or the offering of this exhibit by the defendant raises a point that perhaps I should have cleared up by the plaintiffs.

Mr. Scott: May I mark it for identification?

The Court: Wait, please.

Is it the contention of the plaintiffs that Isbrandtsen failed to prosecute the voyage upon which this cargo was carried promptly and without deviation or do you claim that there was delay in the voyage, unreasonable delay in the voyage, and that there was deviation?

Mr. Dunn: With respect to deviation, I take it your Honor is using the term with regard to calling at ports without a legal right to do so under the circumstances rather than a deviation of the issuance of the bill of lading.

The Court: I refer to the voyage as being the journey of the ship from the time it broke port in the Gulf and when it landed in Bombay. I don't (183) refer to that period of time which transpired between the date on which the loading of the cargo was completed and when it broke port, but from the time the ship left port on its voyage to India until its arrival at the port at Bombay, does the plaintiff claim that the voyage was not prosecuted promptly and with due diligence and without deviation?

Mr. Dunn: We do with respect to its departure from New Orleans and with respect to its calling at Tampa.

The Court: Perhaps I didn't make my inquiry specific or make myself pl[illegible].

Colloquy.

From the time the ship left the Port of New Orleans to the time it arrived in Bombay, does the plaintiff claim that portion of the voyage was not prosecuted diligently, promptly and without deviation?

Mr. Dunn: Putting it from the time it left New Orleans, we only have the Tampa stop to complain about, which would cause a delay not material to this action if the same latitude is extended at the other end of the voyage in figuring damages or a date for damages.

The Court: I think this is very important. I would like to get a statement of the plaintiffs' (184) position on this because we have about reached the close of the plaintiffs' case, as I understand it.

Do I understand, then, from your statement that there is no claim made on behalf of the plaintiffs that the voyage of the vessel, once it left the Port of New Orleans, was not promptly and diligently prosecuted and was prosecuted without deviation until you landed in Bombay? Do you waive any complaint with reference—

Mr. Dunn: I put it this way, your Honor: I do not attribute our damage to any delay and in order not to keep it in the case as a small and fairly immaterial matter, I will withdraw such claim with respect to the voyage.

The Court: So that there will be no misunderstanding, then, it is not claimed by the plaintiff that it sustained any damage by reason of a failure to diligently prosecute the voyage from the time that the ship left New Orleans to when it arrived in Bombay?

Mr. Dunn: To make it very clear, in determining a date when the vessel should have arrived, and when

it did arrive, one cannot pinpoint it as a matter of minutes or even as a matter of a day or (185) two. Consequently, anything involved in the voyage about which we might complain would be under the category of de minimus and we can't expect to pinpoint our time to that extent. For that reason I am withdrawing any such claim.

The Court: All right.

* * * * * * * * *

---

(213) FREDERICK R. BECKER, JR., called as a witness in behalf of Colorado Fuel and Iron Corporation, having been first duly sworn, testified as follows:

Direct Examination by Mr. Bensel:

* * * * * * * * *

(214) Q. How long have you been connected with the Farrell Shipping Company? A. Since November, 1932.

Q. Does the Farrell Shipping Company act as freight forwarders for various customers throughout the United States? A. That is correct; that is the nature of our business.

Q. And one of your customers is Colorado Fuel and Iron? A. Yes.

Q. Who are some of the other large customers of your company? A. Caltex Oil Products Company, Texas Company, Procter & Gamble, Firestone Tire & Rubber Company, Mid-Continent Petroleum Corporation, Standard Vacuum Oil Company.

Q. With all due pride, would you say that Farrell Shipping Company is one of the largest local freight for-

warders and brokers in the Port of New Orleans? A. Definitely.

* * * * * * * *

(217) Q. With whom did you make the arrangements for space for this merchandise? A. Well, we were finally successful in getting space from Isbrandtsen Steamship Company through their agents, Hansen & Tidemann.

Q. In New Orleans? A. Yes.

Q. And did you, on behalf of Colorado, enter into a freight engagement contract? A. We did.

Mr. Bensel: Your Honor, that has been offered in evidence and I am not going to take any time with that.

Q. That was on July 29th, wasn't it? A. I think that's correct.

Q. Did that contract specify the boat? A. Yes, it named the SS Jane G. Swisshelm or equal A-1 substitute, as I recall.

Mr. Tillinghast: Will you fix the date of the contract, please?

Mr. Bensel: July 29. It has been marked in evidence.

* * * * * * * *

(218) Q. Did there come a time when Hansen & Tidemann advised you that Isbrandtsen desired to substitute a vessel for the Swisshelm? A. Yes.

Q. Do you remember when that was, approximately? A. No. It was either at the time of the first booking or shortly thereafter.

Frederick R. Becker, Jr.—For Colorado Fuel and Iron Corp.—Direct.

Q. Did they tell you the name of the vessel that they were going to substitute? A. Not at that time. It was not known. Later they did.

Q. Well, did there come a time in August, 1948, when they advised you of the name of the vessel to be substituted? A. Yes.

Q. What was it? A. The SS Hawaiian.

* * * * * * * * *

(219) Q. Under this freight engagement contract that you mentioned a minute ago, Isbrandtsen reserved the right to substitute what is known as an A-1 vessel. (220) What does the term "A-1" mean?

The Court: The Court will take judicial notice of that. It is a Lloyd's classification, isn't it?

The Witness: Yes, sir.

Q. For insurance purposes? A. For insurance purposes, correct.

* * * * * * * * *

(222) Q. Did the merchandise arrive in New Orleans from Colorado? A. Yes, it arrived on the west side, at a little town called Westwego.

Q. On what railroad? A. Texas and Pacific Railroad.

Q. Were you advised that all of the caustic soda that had been shipped by rail from Colorado to Westwego had been loaded aboard the S.S. Hawaiian? A. Yes, we were advised of that loading.

Q. And all of it was loaded? A. All of it was loaded.

Q. There was none left on the dock or wharf? A. Definitely not.

* * * * * * * * *

(223) Q. Did there come a time when Hansen & Tidemann requested you to pay this freight? A. Yes, they

told us we would have to pay the freight to secure the ocean bills of lading as soon as the cargo was loaded.

Q. Did you communicate that fact to Colorado? A. We asked Colorado to give us a check payable to Hansen & Tidemann for the amount so that we would have it available to secure the bills of lading as soon as the cargo was loaded.

Q. And did you get a check from Colorado? A. We did.

Q. Do you remember when? A. It was received in our office on September 2nd.

Q. And did you turn that check over to Hansen & Tidemann? A. We turned that check over to Hansen & Tidemann, as I recall it, on September 3rd, at which time they surrendered the bills of lading (224) to us.

* * * * * * * *

(245) Cross Examination by Mr. Scott:

* * * * * * * *

Q. Do you keep abreast of day to day events there? A. I try to.

Q. When did you learn of this strike, what (246) time of the day? You said September 3rd. A. I do not recall the exact hour of the day.

Q. Well, your best recollection. We are not trying to—

The Court: He wants your best recollection.

A. I would say in the afternoon, I believe.

Q. Can you come any closer to about what time it was? A. Perhaps very early in the afternoon.

Q. By that time, before that time, the bills of lading covering this caustic soda had been issued and were in your possession? A. I believe so.

Q. And the freight had been paid? A. I think so.

Q. You had your messenger pick those bills of lading up at the office of Hansen & Tidemann about 9 o'clock in the morning of the 3rd, didn't you? A. Well, I wouldn't—

Q. Of September 3rd? A. I think it was in the morning but I wouldn't recall the time.

* * * * * * * *

(247) Q. Who picked the bills of lading up? A. Probably one of our runners.

Q. Isn't that the fact?

Mr. Bensel: Isn't what the fact?

The Court: Isn't it the fact that it was one of your runners?

The Witness: Yes.

* * * * * * * *

(248) Q. Did you ask for the bills of lading? A. It is customary for us to do so and it is difficult to remember so far back.

Q. I understand; I am just trying to get your best recollection. A. In the normal procedure of our business we would ask for the ladings, yes, sir.

Q. You as the shipper? A. As the shipper's representative.

(249) The Court: Do you recall whether on this particular ship you asked that the bills of lading be sent to you or that you sent someone to pick them up?

The Witness: We must have asked for it. It is a customary procedure to do so. Bear in mind I didn't personally handle every detail of the transaction. The clerks in the office perform certain duties in following the shipments up, getting them

delivered and tracing it to see that we get our documents as soon as possible and we must have asked for them.

* * * * * * * *

(250) Q. This booking arrangement for 1000 tons which you made under date of July 29th was amended and extended to include additional tonnage? A. Yes, sir.

Q. At a later date? A. Right.

Q. Was that extension made after the substitution of the Hawaiian for the Swisshelm? A. Yes.

Q. So that at the time the extension was made you had knowledge of the substitution? A. What do you mean by extension? Do you mean the increase to 1500 tons?

Q. Yes, the increase. A. Yes, that's right. As I recall it, the increase was made about two days after advice of the substitution of the SS Hawaiian.

Q. That substitution was entirely satisfactory to you, was it? A. Yes.

Q. You didn't care which vessel it was so long (251) as it was an A-1 vessel? A. That is correct. As I see it, we had no choice. The contract specifies an A-1 vessel.

Q. It made no difference to you, is that right, the substitution of a vessel? A. No, it would have made no difference to me.

* * * * * * * *

(252) Q. Do you know when the loading of this was completed on September 3rd, what time of the day, or before what time that day? A. I think if I search my files I could check it, but, as I recall, it was in the wee hours of the morning, I think.

Q. Will you see whether you have definite information on it, if it won't take too much time? A. Well, I would have to go through this here.

Frederick R. Becker, Jr.—For Colorado Fuel and Iron Corp.—Cross.

(Witness examines papers.)

A. (Continuing) I would say that all the caustic was loaded by 7:00 a.m. September 3rd.

Mr. Dunn: I could not hear that.

The Court: He says that he would say that all of the caustic soda was loaded by 7:00 a.m. on September 3rd.

Q. And that 7:00 a.m. hour is the time the (253) night shift knocks off at New Orleans, isn't it, 7:00 a.m.? A. Yes, that's right.

Q. Would you say that you received the bills of lading after 7:00 a.m. on the 3rd? A. Oh, yes, definitely. Our office doesn't open until at least 8:30 or 9:00 a.m.

Q. Would you say that you received the bills of lading before noon on the 3rd? A. That is very difficult to make a definite statement on. I would say we definitely had them on September 3rd. It is difficult to pin it down to a time. We are picking up hundreds of bills of lading daily and to remember one specific transaction is very difficult.

* * * * * * * *

(260) Q. You have no reason to believe that any information was withheld from you? A. No.

Q. You were satisfied that you had all available information which concerned you about this matter?

Mr. Bensel: What matter?

Mr. Scott: About this cargo, the shipment.

A. I don't quite understand your question.

Q. You received all the information you wanted as things went along, didn't you? A. Yes, whenever we asked questions the answers were there for us.

Matthew S. Crinkley—For Defendant Isbrandtsen Company, Inc.—Direct.

Q. There were no strained relations of any kind? A. Definitely not.

* * * * * * * *

---

(317) MATTHEW S. CRINKLEY, called as a witness by defendant Isbrandtsen Company, Inc., being first duly sworn, testified as follows:

Direct Examination by Mr. Scott:

Q. By whom are you employed, Mr. Crinkley? A. By the Isbrandtsen Company, Inc., of New York.

Q. What is your position? A. My position is executive vice president.

Q. How long have you held that position? A. Two years. Before that I was vice president since about 1936 or 1937.

Q. How long have you been with the company? A. Twenty-five years in July.

Q. Did this matter in suit here, as far as (318) Isbrandtsen was concerned, come under your overall supervision? A. Yes, sir.

Q. You are familiar in general with the booking under which this caustic soda was booked? A. Yes, sir.

Q. And the substitution of the SS Hawaiian for the Swisshelm? A. Yes, sir.

Q. Who were your agents at New Orleans? A. At that time it was Hansen & Tidemann, Inc.

Q. When did you first hear of this strike at New Orleans? A. I only heard about it late in the day on September 3rd. I was told that a strike had been called and loading discontinued and the vessel put at anchor.

Q. September 3, 1948? A. 1948, yes, sir.

Matthew S. Crinkley—For Defendant Isbrandtsen Company, Inc.—Direct.

Q. And after that the vessel was off hire— A. Yes, sir.
Q. —as between Isbrandtsen as charter and the Hawaiian Line as owner? A. Yes, sir, American-Hawaiian Company.

(318a) Q. Until the strike was over and the vessel sailed? A. Yes, sir, until the strike was over and the vessel returned to the pier to complete loading.

Q. Then it came back on hire? A. Yes.

(319) Q. I show you a cable and ask you whether you have produced that from the company's files. A. Yes, sir.

Mr. Scott: Mark it for identification, please.

(Marked Defendant Isbrandtsen's Exhibit E for identification.)

Mr. Scott: I offer that in evidence.
The Court: Is there any objection?
Mr. Dunn: No objection.

(Defendant Isbrandtsen's Exhibit E for identification received in evidence.)

Q. Mr. Crinkley, that cable is the sailing orders for the master of the vessel? A. Yes, sir, to leave New Orleans.
Q. I show you another cable and ask you whether you have produced that from your files? A. Yes, sir.

Mr. Scott: Mark it for identification, please.

(Marked Defendant Isbrandtsen's Exhibit F for identification.)

Mr. Scott: I offer that in evidence.

Siguard E. Simpson, Jr.—For Defendant Isbrandtsen Company, Inc.—Direct.

The Court: I do not see the relevancy (320) of the cable in view of the concession made by the plaintiff. The plaintiff does not claim that once the ship sets sail from the port that there was any deviation or delay in the voyage.

Let me see it.

(Exhibit is handed to the Court.)

The Court: I do not see how this is material at all in view of the concession that plaintiff has made here.

Mr. Scott: Very well, your Honor.

The Court: If you think it is you put it in the record. You have a concession here by the plaintiff that the plaintiff does not claim that the voyage was not conducted properly or that there was any deviation after the ship left the Port of New Orleans.

Do I understand the plaintiffs' concession correctly?

Mr. Dunn: We are not claiming deviation after the vessel left New Orleans.

* * * * * * * *

---

(349) SIGUARD E. SIMPSON, JR., called as a witness by defendant Isbrandtsen Company, Inc., being first duly sworn, testified as follows:

Direct Examination by Mr. Scott:

Q. Mr. Simpson, by whom were you employed in September, 1948? A. Hansen & Tidemann, Inc.

Q. Of where? A. New Orleans, Louisiana.

Siguard E. Simpson, Jr.—For Defendant Isbrandtsen Company, Inc.—Direct.

Q. What was the relationship between Hansen & Tidemann and Isbrandtsen at that time with respect to this vessel, the SS Hawaiian? A. Hansen & Tidemann, Inc. in New Orleans were agents for Isbrandtsen Company, Inc.

Q. Did you personally handle a large number of matters which related to the vessel and this cargo? A. Yes, I did.

Q. When did you first see this vessel? A. On the arrival at the bunker terminal on the—I think it is 10 o'clock on August 30th, if I am correct, on arrival at the bunker terminal at Chalmette, Louisiana.

Q. Did you board the ship at that time? A. Yes, I did.

Q. What's the procedure when a ship comes in to the Port of New Orleans as this one did? (350) A. Well, the preliminary customs entry must be made before any business can be taken care of. On boarding the vessel the United States Custom inspector boarded with us and did the preliminary entering of the vessel at that time.

Shall I go on? I can go on right down to the time we commenced bunkering and from there on out, because there was a lot of business transacted at that time.

Q. Did you look at the condition of the vessel? A. Yes, sir.

Q. What was the condition of the vessel? A. Good condition.

Q. Did you keep continuous contact with the loading of this vessel while it was there and while it was loading? A. Yes, sir.

Q. When were the two bills of lading covering this caustic soda shipment delivered by Hansen & Tidemann to Farrell Shipping Company? A. They were not delivered. They were delivered by Hansen & Tidemann, Inc. to the runner of Farrell Shipping Company in our office on the morning of the 3rd.

(351) Q. At what time? A. At 9:30.

Siguard E. Simpson, Jr.—For Defendant Isbrandtsen Company, Inc.—Direct.

Q. 9:30 o'clock in the morning of September 3, 1948? A. That's right.

The Court: May I interrupt? Have we this witness' deposition in evidence?

Mr. Scott: No, sir, we have not.

By Mr. Scott:

Q. Had any request been made by Farrell Shipping Company for those bills of lading before that time? A. Yes. It is a normal procedure to be called and asked when they could possibly—when they may expect to be able to receive their ladings. They called the day prior, the 2nd.

Q. Who, for Farrell, made that request? A. Well, it would be any number of persons in their office. I don't think it was Mr. Becker himself. I would say one of the clerks under his jurisdiction in the office would call to find out when his bills of lading would be ready.

Q. At the time those bills of lading were issued, was this cargo on board the SS Hawaiian? A. Yes, it was.

(352) Q. At the time those bills of lading were delivered by Hansen & Tidemann to Farrell, did you know anything about this strike? A. In which respect?

Q. Had the strike occurred? A. No, it had not.

Q. When did it occur? A. To my knowledge, at 10 o'clock on the morning of the 3rd of September.

Q. When did you first learn about it? A. At 10 o'clock.

Q. At the time the bills of lading were delivered by Hansen & Tidemann to Farrell, did you know there was going to be a strike? A. No, I did not.

* * * * * * * *

Siguard E. Simpson, Jr.—For Defendant Isbrandtsen Company, Inc.—Direct.

By the Court:

Q. Were you down at the dock while the ship was (353) being loaded and cargo stowed? A. No, sir, not during the whole operation. I was down there on numerous occasions, yes, sir.

Q. Were you down there when it began? A. Yes, sir, the first morning of loading I am always down there.

Q. When did it begin? A. Is that on the 31st? Did she commence loading on the 31st according to the port log there?

Q. Don't you know without looking at a record? A. Yes. I would say on the 31st at 1:00 o'clock.

Q. A. M. or P. M.? A. P. M. I think the port log will bear that out.

Q. Where was this cargo stowed? A. The caustic soda?

Q. Yes. A. No, sir, I couldn't tell you without looking at the plan of the vessel.

The Court: All right.

* * * * * * * *

(355) By Mr. Scott:

Q. In whose custody was the SS Hawaiian while (356) it was off hire? A. Strachan Shipping Company in New Orleans.

* * * * * * * *

By Mr. Scott:

Q. After the strike was over, was this vessel (357) loaded and dispatched from New Orleans as fast as possible? A. Yes, sir, she was. She worked completely around the clock from the commencement of loading until she sailed.

* * * * * * * *

Siguard E. Simpson, Jr.—For Defendant Isbrandtsen Company, Inc.—Cross.

Cross Examination by Mr. Tillinghast:

(363) Q. I hand you what are demoninated Plaintiffs' Exhibit Dalton 1, supplied by Mr. Dalton at the time of his examination. These are captioned "Mate's Daily Report." You are familiar with those records? A. Yes, sir.

Q. Do you keep those records? A. Yes, sir, our chief wharf clerk keeps those.

Q. And they are prepared in the ordinary course of your business? A. That's right, sir, each day.

Q. Each day. I show you page No. 1. Does that show all the cargo loaded on August 31? A. Yes, sir, it does.

Q. Between what hours? A. No, it doesn't say between which hours on here.

Q. Would it be before midnight on that day? A. You say, would it be all loaded—

Q. Before midnight. A. On August 31?

Q. Yes. A. Yes, since it don't—

(364) Q. August 31st ends at midnight, doesn't it? A. Yes, it does.

Q. I show you page 2. What does that show with respect to the loading of the cargo? A. It shows the cargo loaded on September 1st with a second sheet to follow.

Q. Is this on September 1st? A. This is all cargo loaded on September 1st, yes.

The Court: These are the tally sheets, are they not?

The Witness: The mate's daily reports of what goes into the ship.

The Court: Of what goes into the holds?

The Witness: Yes, sir.

Q. That is to midnight on the 1st of September? A. Yes, sir.

Siguard E. Simpson, Jr.—For Defendant Isbrandtsen Company, Inc.—Cross.

Q. Now I am showing you the next page captioned September 2.

Mr. Bensel: There are two sheets, aren't there?
Mr. Tillinghast: There are three sheets.

Q. What does that sheet demonstrate? A. It shows the cargo loaded on September 2nd.

(365) Q. Up to what time, do you know? A. No, sir. We could say midnight but I don't know.

Q. What dates do those sheets cover? A. September 2nd and to 7:00 a. m. on September 3rd.

Q. When are those records made, Mr. Simpson? A. At the time of loading.

Q. As drums were taken from a particular railroad car and loaded into the ship there was a note made on this mate's report? A. As it was taken off of the wharf. These drums had already been placed on the wharf and identified by car numbers, and when all of that car was removed from the wharf then that was placed on this daily mate's report, signed for by the mate.

Q. By that you mean when it was taken from the particular railroad car and loaded into the ship? A. Taken off of the wharf because from the railroad car it is unloaded and put on to the wharf.

Q. Yes. A. And then when it is removed and taken off of the cars—taken off of the wharf and loaded into the ship, and an entire car has been removed off of the wharf, it is placed on this hatch (366) report by the mate.

Q. And the car numbers are noted on these records? A. On this report, that's right.

Q. You list cargo loaded from the wharf, removed from the wharf, as you said, as it is loaded? A. That's right.

Q. Each shipment in its turn depending on when it is loaded is listed? A. That's right.

Siguard E. Simpson, Jr.—For Defendant Isbrandtsen Company, Inc.—Cross.

Q. Did you order stevedores to work overtime on September 2d? A. Yes, sir, they were ordered to work around the clock. We had decided because of the overtime, to get the ship out, to sail the ship before the weekend would cost a lot less than what the ship was actually costing us.

Q. What time was the loading of the ship completed? A. What time?

Q. At what time was the loading of the ship stopped? A. Oh, stopped. At 10 o'clock on September 3rd.

Q. And there was no loading from what time forward? A. From 10 o'clock forward.

Q. Will you refer to the mate's records, the mate's daily reports, and refresh your recollection (367) and see if that is still your answer, on September 2d? A. Yes, they worked from 7 o'clock until 10 o'clock on the 3rd, on September 3rd—they worked up until 10:00 a. m.

* * * * * * * * *

(368) Q. According to the stowage plan where was the caustic soda stowed which is the subject of these two shipments?

The Court: Objection sustained.

Q. Now that—

The Court: The stowage plan speaks for itself and will be examined by the Court.

Next question.

Q. Isn't it a fact that all the caustic soda (369) was stowed in the lower holds—

The Court: Objection sustained.

Counsel, I dont think you understand my ruling; if you do, you do not want to abide by it.

Siguard E. Simpson, Jr.—For Defendant Isbrandtsen Company, Inc.—Cross.

Mr. Tillinghast: I have a very good point in this, your Honor.

The Court: Then on your statement and my recognition of your ability as an experienced trial counsel I will permit the question to be answered, although I think it is a point that you might make in your brief. All right you may press it, if you want.

Mr. Tillinghast: It is obvious from these documents, and I think Mr. Simpson will bear it out, that this caustic soda was not only heavy cargo but that it required bottom stowage, and it was also consigned to the final ports of call on this voyage; that other cargo stowed in the same holds would necessarily have to be on top of this cargo and would be loaded after the caustic soda was loaded.

Is that true, Mr. Simpson?

A. That's right.

Q. What other cargo on September 2nd particularly with respect to the caustic soda was (370) loaded? A. Only trucks and vehicles.

Q. And auto parts also? A. That is right.

Q. Where were those auto parts, automobiles and vehicles loaded? A. I have some here in the No. 1 lower—

Q. What ports were they consigned to? A. Khorandran and Bashra.

Q. On this vessel's itinerary, when she sailed from New Orleans, which came first, Bombay or the last two ports that you just mentioned? A. The last two ports came first.

Q. Was the Bashra and Khorandran cargo stowed over the caustic soda? A. Yes. The stowage plan shows that automobiles were put on the caustic soda in four lower

holds and also in No. 5 lower hold; as a matter of fact, throughout the whole ship.

Q. Could you express an opinion as to how long it took you working every hold and every hatch to load the Khorandran and Bashra cargo? A. They were not loading every hatch with the Bashra and Khorandran cargo on the 2nd of September; they were only loading No. 1, 2, 4 and 5, and only partially No. 1 and 2 which would take—which would (371) make—I am sorry, I am looking at the caustic soda. They only loaded in No. 1 and 4 holds—I am sorry, I have got the wrong sheets in front of me.

On September 2nd and 3rd during the night of September 2nd and 3rd, the automobiles were loaded in No. 1, No. 2 holds, No. 5 and No. 4.

Q. The caustic soda had been loaded in those holds, hadn't it? A. Yes, prior to the time.

Q. Isn't it also a fact that you did not complete the loading of the motor vehicles until after the strike when the vessel put back into the berth? A. That's right, we had to go back to Westwego to complete the loading of the vehicles at Westwego.

Q. Would that indicate to you that the loading of the vehicles followed the loading of the caustic soda? A. Yes, sir.

Mr. Tillinghast: I have no other questions.

Re-direct Examination by Mr. Scott:

Q. Mr. Simpson, do you have your loading certificate there when the loading was completed? A. The New York Board of Underwriters loading certificate?

(372) Q. Yes. A. Yes.

Q. That is the original? A. Yes.

Q. Is that complete now? A. That is the underdeck cargo. This is for the deck loading.

Mr. Scott: Mark these for identification, please.

(Marked Defendant Isbrandtsen Exhibits I and J for identification.)

Q. Does Exhibit I relate to the underdeck cargo? A. Yes, sir.

Q. Does that include the caustic soda? A. Yes, sir.

Q. All of it? A. Auto parts, soda ash, lube oil and miscellaneous general cargo.

Mr. Scott: I offer that in evidence.

Mr. Dunn: I move to strike out the witness' last answer. If this paper is going to be offered in evidence I think it should be permitted to speak for itself.

The Court: I am not going to take this witness' interpretation of what is shown on a document. I will look at the document myself. Is there any objection?

(No response.)

(373) (Defendant Isbrandtsen Exhibit I for identification received in evidence.)

Q. Does this other certificate relate to the deck cargo, the one that has been marked J? A. Yes, it does.

Mr. Scott: I offer this in evidence.

(Defendant Isbrandtsen Exhibit J for identification received in evidence.)

Siguard E. Simpson, Jr.—For Defendant Isbrandtsen Company, Inc.—Re-cross.

Q. Are those all the loading certificates issued for this vessel? A. Yes, sir.

* * * * * * * *

(395) Re-cross Examination Continued by Mr. Tillinghast:

Q. After the labor dispute was settled and the labor impediments were removed in December 1948, were operations resumed on the ship? A. Yes, sir.

Q. Was there any delay in resuming operations? A. Not any abnormal delay, if any.

Q. What do you mean by that? A. Well, I mean anything that would hold the ship up outside of her normal operations.

Q. It took a considerable time to get a crew, didn't it? A. I think two or three days.

(396) Q. And after the crew was on board it took time to get up steam and get the ship in condition to load? A. That's right.

Q. One more point: is there any doubt in your mind that the caustic soda was loaded before the bills of lading were issued? A. Is there any doubt?

Q. Yes. A. No, sir.

Q. None whatever? A. None whatsoever.

The Court: All right, thank you. Next witness.

* * * * * * * *

(486) Mr. Scott: On behalf of defendant Isbrandtsen (487) Company, Inc., at this time I renew this defendant's motion to dismiss made at the end of the plaintiffs' case, and further move to dismiss the second, third, fourth and fifth causes of action on the ground that the plaintiff has failed to make out a case or failed to present evidence entitling it to judgment.

The Court: I will reserve decision.

Mr. Scott: I further and specifically move to dismiss the fifth cause of action on the ground that that cause of action for cargo damage is barred by the one-year provision in the United States Carriage of Goods by Sea Act applicable to this shipment and incorporated in the bills of lading, the cargo having been delivered in India on or before March 12, 1949, and the action not having been commenced against Isbrandtsen until the service of the summons and complaint on this defendant on or about October 27, 1950, more than one year after the delivery of the cargo.

The Court: I am tempted to grant your motion, but at this time I will reserve decision.

Mr. Dunn: May I ask the Court to request counsel to clarify as to whether he is arguing with (488) respect to the statute which has to do with the Carriage of Goods by Sea Act, or the bill of lading.

The Court: He is arguing both. He is arguing both on the statute, insofar as it is incorporated by the bill of lading and by express reference to it; he is also arguing by reason of the Louisiana statute that he has urged, and on all the grounds he has urged both on the trial and in the memorandum that he has submitted.

Mr. Scott: I am coming to the Louisiana statute now.

The Court: You do not have to come to it. You move to dismiss on all grounds and I am going to reserve decision on it.

Mr. Dunn: Does his pleading as to the statute still stand? That is all I want to know, your Honor.

The Court: I understand that he has pleaded the Louisiana statute as one of the defenses.

Mr. Scott: There are two Louisiana statutes, one of which is applicable to a common carrier—

The Court: Yes, I understand.

Mr. Scott: They are pleaded in the amended (489) answer which amendment your Honor granted on the trial, and I will now hand up to your Honor, as you requested the other day, a photostatic copy—

The Court: Of the statute?

Mr. Scott: Of those statutes.

The Court: I am very grateful to you for that. Are they in English or French?

Mr. Scott: They are in English, sir. Those statutes relate to prescriptions. One of them is a 2-year statute applicable to common carriers and runs from the date of shipment, the date of shipment here being the date the goods were placed on the vessel and bills of lading issued, namely, September 3, 1948. The action was not commenced until October 27, 1950, more than two years after that date.

It is interesting to note that in the annotations to the Louisiana statute they fix the date of shipment as the date the goods are delivered to the carrier for shipment and on which the carrier issues its bill of lading, and in the annotation they cite the case of Goldenberg v. Cutler, 189 App. Div., 489, 178 N. Y. Supp. 522.

The Court: That is New York law.

(490) Mr. Dunn: I realize that, but isn't this something for briefs?

The Court: Yes, it is, but Mr. Scott wants to inform the Court on this. I think that he has already pointed it out in a memorandum that he submitted and that I have had occasion to read some weeks ago.

Mr. Scott: Now, the other Louisiana statute which was handed up is in Article 3536 of the Louisiana Civil Code and that applies to all others; that is a 1-year statute and it applies to tort actions generally, and the prescription runs as to offenses or quasi offenses and includes everything not previously provided for. I have included

in the pages I have handed up the preceding sections which relate to a shorter period to which I refer now and my motion to dismiss is on the ground of each of those Louisiana statutes, and also I contend that the 1-year statute in the United States Carriage of Goods by Sea Act applies as well to the second, third and fourth causes of action.

I have previously mentioned that as to the fifth, and I think it applies to the others as well. (491) It is covered by the bill of lading which incorporates that statute and which is applicable as a matter of law to this shipment. So I make my motion to dismiss broad enough to include all those grounds.

On all the proof and on the answer of the defendant Isbrandtsen Company, Inc., as amended I move for a judgment.

The Court: Decision is reserved.

Mr. Scott: There is one other motion I have, and that is: I move to dismiss the cross claim of American-Hawaiian Steamship Company against Isbrandtsen Company, Inc., which cross claim is included in paragraphs 39, 40, 41 and 42 of the answer served by the defendant American-Hawaiian Steamship Company.

The Court: Decision is reserved.

* * * * * * * *

Plaintiffs' Exhibit 2 (In Part).

(Badhwar Deposition)

(1254)

Deposition of R. S. Dass Badhwar, one of the plaintiffs herein, taken by the plaintiffs at the offices of Messrs. Rathbone, Perry, Kelley & Drye, attorneys for defendant, the Colorado Fuel and Iron Corporation, No. 70 Broadway, New York, N. Y., commencing at 2:30 o'clock P. M. on the 30th day of November, 1950, before Irwin R. Stone, a Notary Public of the State of New York.

* * * * * * * *

(1256) R. S. Dass Badhwar, called and sworn as a witness on behalf of plaintiffs, testified as follows:

* * * * * * * *

(1275) Cross Examination by Mr. Bensel:

Q. Mr. Badhwar, what is your business? A. I am general manager of sugar mills, general manager of R. B. Lachhmandass Mohanlal & Sons, Ltd., (1276) sugar mills, Jarwal Road, O. T. Rly., India, and a partner of Mulkraj Brothers & Badhwar.

Q. And were you general manager and partner of that firm in August of 1948? A. Yes.

Q. And you still are? A. In August, 1948 I was not general manager.

Q. What were you? A. I was only a partner and consultant to them in their head office at Lucknow.

Q. What was the nature of the business of this partnership in 1948? A. This partnership business was importing heavy chemicals, caustic soda and soda ash.

Plaintiffs' Exhibit 2 (In Part).
R. S. Dass Badhwar—For Plaintiffs—Cross.

Q. Did they use heavy chemicals that they purchased for their own account? A. No, very little.

Q. What was their principal business in connection with heavy chemicals? A. Just to sell.

Q. To resell them? A. Resell them.

Q. Would the firm be what we term brokers in chemicals? A. No. "Dealers," we would call them in India. They would import on their account and sell it.

Q. In connection with the caustic soda that is involved in this action, were they acting as dealers? A. Yes.

Q. For their own account? A. Yes, for their (1277) own account.

Q. Did the partnership resell this merchandise? A. Yes, we have resold.

Q. And did you have a contract in connection with the resale? A. No.

Q. When did the resale take place? A. The resale took place long after it had arrived.

Q. Prior to the arrival of the merchandise, had the plaintiffs agreed to sell it to a third person? A. No.

Q. You mentioned in the course of your testimony that this merchandise, when received, was placed in a warehouse? A. Yes.

Q. Was that a practice of the plaintiffs, to warehouse merchandise of this kind for subsequent resale? A. Yes. Warehouse means go-downs, go-downs which we rented.

Q. Were they warehouses? A. Yes. I don't know what you call them.

Q. You used the term "warehouses." I didn't. A. That is what I meant. The goods, whatever is left, they are lying in the go-downs.

Q. You have mentioned that this shipment, when received in Bombay, was handled by a firm you (1278) described as your clearing agents? A. Yes.

Plaintiffs' Exhibit 2 (In Part).
R. S. Dass Badhwar—For Plaintiffs—Cross.

Q. Who paid the clearing agents? A. We paid.

* * * * * * * * *

(1302) Mr. Dunn: I will put on the record the theory under which damages stated in the complaint were computed.

Mr. Bensel: And what they consist of.

Mr. Dunn: I make this statement without prejudice to the right of disagreement with anything that has been said before on the record.

The sum mentioned as damages in Paragraphs of the complaint designated 8, 31, 34 and 39 is composed of the following elements:

First, the difference in the amount of (1303) import duty actually paid by plaintiffs on the shipment and the amount of duty that would have been levied against the shipment if it had arrived prior to January 1, 1949, at which time an increase in the prevailing rate with respect to this commodity went into effect. The witness has already referred to this duty item of damage upon this examination.

Mr. Bensel: What is it in dollars?

Mr. Dunn: Roughly, about $40,000. I would have to dig up my notes on the computation. That is a matter of arithmetic from the rates given in the testimony.

* * * * * * * * *

(1304) The other element of damage included in the sum mentioned in the complaint, as aforementioned, is a figure computed at 11 rupees per hundredweight, representing the difference between the market price at the place of destination of the shipment between the time when the shipment might have been expected to arrive and the time when it actually did arrive.

Plaintiffs' Exhibit 2 (In Part).
R. S. Dass Badhwar—For Plaintiffs—Re-cross.

The reasons for it not arriving are referred to in the other paragraphs of the complaint.

Off the record.

* * * * * * * *

Mr. Bensel: What is the amount of that in dollars?

Mr. Dunn: $98,112.01.

Mr. Bensel: What date have you taken as the date when you claim the shipment should have arrived?

Mr. Dunn: A date on or prior to November 15, 1948. In other words, November 15th is the last date at which we think the shipment should have arrived, without excluding the possibility of it arriving earlier than that.

Mr. Bensel: In making this computation, what date have you actually taken for the market (1305) price?

Mr. Dunn: The market price we have taken prevailed on and for some time prior to November 15, 1948.

Mr. Bensel: What date have you taken for the arrival, actual arrival date?

Mr. Dunn: Arrived in the harbor on February 26th. We have taken February 28th for the purposes of computation, without excluding the possibility that a date approximate to that, and a little later, might prove to be the correct one to have adopted.

* * * * * * * *

(1340) Re-cross Examination by Mr. Bensel:

Q. You stated in answer to your counsel's question that you wrote letters to other persons to be communicated to Colorado Fuel & Iron Corporation? (1341) A. Yes.

Plaintiffs' Exhibit 2 (In Part).
R. S. Dass Badhwar—For Plaintiffs—Cross.

Q. To whom were you referring? A. To the National City Bank of New York at Bombay, who were the intermediaries in this transaction.

• • • • • • • • •

(1351) Cross Examination by Mr. Scott:

• • • • • • • • •

(1353) Q. When was this caustic soda purchased? A. August, 1948.

Q. Did you buy it to resell? A. Yes.

Q. Was it speculation? A. Yes.

• • • • • • • • •

(1356) Q. When did you receive this caustic soda from the Bombay Port Trust? A. It was in March, 1949.

Q. I show you a paper dated November 27, 1950, on the letterhead of the Bombay Port Trust and ask you whether that document correctly reflects the dates of delivery. A. That would be correct.

Q. That was delivery by the Bombay Port Trust to your partnership? A. Yes.

Mr. Scott: Mark it for identification.

(Paper dated November 27, 1950 on the letterhead of Bombay Port Trust marked Defendant Isbrandtsen's Exhibit C for Identification, 12/4/50, I. R. S.)

• • • • • • • • •

Plaintiffs' Exhibit 2 (In Part)

Defendant Isbrandtsen's Exhibit C in Badhwar Deposition.

BOMBAY PORT TRUST.

No. AC/2-1754 27th November 1950

From The Deputy
Alexandra
Bombay

To

Messrs. Shaw Wallace & Company Limited,
Bombay.

Subject.—s.s. "Hawaiian" IGM No. 1294 of 26-2-49—
Reference: Your letter No. SH/CS dated 23-11-50—

The consignments in question have been delivered as under.

Item No.	*Marks & Nos.*	*No. of Pkges.*	*Date of Delivery*
2	Mulkraj Lucknow via B'bay 1/3217	182	7-3-49
	"	498	8-3-49
	"	428	9-3-49
	"	262	do.
	"	610	10-3-49
	"	278	11-3-49
	"	660	14-3-49
	"	299	16-3-49
		3217	
3	"	533	12-3-49
	"		
	3218/4799		
	"	22	do.
	"	652	13-3-49
	"	148	14-3-49
	"	211	16-3-49
	"	16	17-3-49
		1582	

Illegible
Dy. Manager,
Alexandra Dock

Seq/D

Plaintiffs' Exhibit 3 (In Part).
Joseph H. Masse—For American-Hawaiian Steamship Company—Direct.

Q. Do you know the date when this caustic (1357) soda was delivered by the ship to the Bombay Port Trust? A. It was, you see, on the same dates when we were removing.
Q. Do you know that of your own knowledge? A. Yes.

* * * * * * * * *

(1371) The Witness: I don't know.

Q. You still have some of this caustic soda, have you not? A. Yes.
Q. How much? A. When I left I had about one thousand tons, and I left on the 19th of July.

* * * * * * * * *

Plaintiffs' Exhibit 3 (In Part).

(Masse Deposition)

* * * * * * * * *

(2)

JOSEPH H. MASSE, being duly sworn by Harriet C. Thirkield, Notary Public, as a witness on behalf of the American-Hawaiian Steamship Company, testified as follows:

By Mr. Tillinghast:

Q. Where do you reside? A. 88 West Plain Street, Wayland, Massachusetts.
Q. Are you a seafaring man? A. Yes.

* * * * * * * * *

Q. What license do you hold? A. I hold a master's license, all oceans.
Q. All oceans, all types of vessels? A. Yes.

* * * * * * * * *

Plaintiff's' Exhibit 3 (In Part).
Joseph H. Masse—For American-Hawaiian Steamship Company—Direct.

(3) Q. By whom were you employed in August 1948? A. American-Hawaiian Steamship Company.

Q. As an officer on their vessels? A. Yes.

Q. Are you still so employed? A. Yes.

Q. How long before August 1948 were you so employed, if you were? A. I have been with the American-Hawaiian Lines since 1924.

Q. Are you experienced in the management and navigation of ocean-going vessels? A. Yes.

Q. In August 1948, to what ship were you assigned? A. Assigned to the steamship "Hawaiian".

Q. In what capacity? A. As master.

Q. By whom was the steamship "Hawaiian" owned? A. The "Hawaiian" is owned by the American-Hawaiian Steamship Company.

Q. Was the vessel at that time in the service of her owners, or on charter? A. Sh was on time charter to Isbrandtsen.

Q. I show you this paper, and ask you if you have seen the original of it? A. Yes.

Q. What is that paper? A. This is the time charter of the "Hawaiian" to Isbrandtsen.

Q. This is a photostatic copy of a time charter between American-Hawaiian Steamship Company and Isbrandtsen Company, (4) Inc., dated August 17, 1948, is that correct? A. Yes.

Mr. Tillinghast: I offer it in evidence.
It is marked Masse Exhibit 1.

Q. Was a copy of the charter delivered to you in August 1948? A. Yes.

Q. Was delivery of the vessel ever made under the charter party which we have been discussing? A. Yes, the vessel was delivered as the vessel passed Quarantine on the voyage to Houston.

Plaintiffs' Exhibit 3 (In Part).
Joseph H. Masse—For American-Hawaiian Steamship Company—Direct.

Q. Was that the voyage out from New York? A. Out from New York, yes.

Q. Do you remember the date? A. I think it was the 19th of August, 1948.

* * * * * * * *

Q. Did you receive any direction with respect to the (5) itinerary of the vessel before the vessel sailed from New York? A. Yes, I believe I had a letter of instructions from Isbrandtsen, telling me to proceed to Houston and pick up this cargo at Houston, and proceed to New Orleans and pick up cargo at New Orleans.

* * * * * * * *

(6) Q. On what date did you arrive at New Orleans? A. Arrived at New Orleans on the 30th of August, 1948.

Q. Did you report to anyone at New Orleans when you arrived there? A. I reported to Isbrandtsen's agents again—Hansen & Tidemann.

* * * * * * * *

(7) Q. When did you commence loading when the vessel was at New Orleans? A. Commenced loading on the 30th of August at noontime—1 o'clock.

Q. Will you describe in some particularity the loading process? A. That is how I refreshed my memory, that we started at 1 o'clock—we finished the bunkering in the morning and we started one gang at 1 o'clock.

Q. On the 30th of August? A. The day she arrived, yes.

(8) Q. Who hired the gang—by gang, you mean stevedores? A. Stevedore gangs, yes.

Q. Do you know who hired those stevedores? A. Hansen & Tidemann, Isbrandtsen's agents.

Q. Do you know who paid the stevedores? A. Isbrandtsen.

Plaintiffs' Exhibit 3 (In Part).
Joseph H. Masse—For American-Hawaiian Steamship Company—Direct.

Q. Was the vessel's gear used to load the cargo? A. Oh yes.

Q. Who operated the winches? A. The stevedores operated the winches.

Q. Who prepared the vessel's holds for the receipt of cargo, by laying dunnage and so on, if that was done? A. The stevedores.

Q. Do you know who furnished the dunnage? A. I don't know, that would be for Isbrandtsen's account.

Q. With respect to the loading, what did you personally do, if anything? A. I didn't do much, just watched the cargo that went into the ship so I would be familiar with it, that is about all, just to see that the ship was stable.

* * * * * * * * *

(9) Q. Was the cargo loaded from a lighter or from the dock, Captain? A. Most of the cargo was loaded from the dock.

* * * * * * * * *

Q. Do you recall what cargo was loaded at New Orleans at this time, Captain Masse? A. At New Orleans the bulk of the cargo was caustic soda, soda ash, lube oil and crated automobiles.

Q. Do you recall where the caustic soda was stowed? A. The caustic soda, being heavy, most of it was in the lower hold.

(10) Q. Did you notice by any chance the methods of dunnaging the cargo loaded at New Orleans? A. Yes, each tier of caustic soda was striped off with a layer of dunnage to distribute the weights evenly, where any cargo was to be loaded on top.

Q. Was that done with respect to the caustic soda? A. Yes.

Q. You mean that each tier was separated by a floor of dunnage? A. A floor of dunnage, yes.

* * * * * * * * *

Plaintiffs' Exhibit 3 (In Part).
Joseph H. Masse—For American-Hawaiian Steamship Company—Direct.

Q. Do you recall where the drums of caustic soda were stowed in relation to other cargo in the hold? A. The drums of caustic soda were stowed in the lower hold, if my memory is correct, I think they came up three high—three drums high—and then that left just about headroom enough that we could top off with crated automobiles.

Q. Did loading at New Orleans continue continuously? A. Yes, during the working periods, stevedores' straight time hours, the work continued.

Q. Until when? A. Until September 3rd.

Q. What happened on the 3rd of September? A. On the (11) 3rd of September the black gang—the engineroom gang—said they wouldn't supply steam any more to the winches, because they were going on strike.

Q. What time of day was that, do you remember? A. About 10 o'clock in the morning, and I talked to them and I asked them to keep supplying steam until we had had an opportunity to get the perishable foodstuffs off the ship, and they supplied steam until around 4 o'clock that afternoon but they wouldn't supply steam—they threatened not to supply steam for the winches in the morning.

Q. In other words, to load or discharge any more cargo? A. For lifting any more cargo.

* * * * * * * * *

(12) Q. Had you had any notice prior to 3 A. M. on September 3rd that any of your men were going on strike in any department? A. No, sir.

Q. So it was a surprise to you? A. A surprise to me.

Q. How many men were left after the black gang left on the afternoon of the 3rd? A. I think two engineer officers and three deck officers.

Q. And of the crew members? A. The crew members had left the ship.

Q. Do you remember the names of the unions which

Plaintiffs' Exhibit 3 (In Part).
Joseph H. Masse—For American-Hawaiian Steamship Company—Direct.

enjoyed the membership of the crew of the Hawaiian—do (13) you know the name of the union for the stewards department? A. Marine Cooks & Stewards—M. C. &.S.

Q. And the engineering gang? A. The engineers—that is the black gang—is the Marine Firemen, Oilers & Wipers.

Q. And the sailors? A. The sailors were S.U.P.—Sailors Union Pacific.

Q. That is the deck department? A. That is the deck department.

Q. And your communications men? A. American Communications Association—A.C.A.

Q. How much cargo, with respect to the ship's capacity, was loaded when the last of the crew members went on strike? A. The vessel was about two-thirds loaded at that time.

Q. Was there other cargo alongside which was in the course of being loaded, on the dock? A. Oh yes, there was still cargo on the dock.

Q. Was any of that loaded thereafter? A. No, sir.

Q. Why? A. Because the black gang was on strike and they wouldn't supply steam for the winches.

Q. Was any cargo discharged from the ship thereafter? A. No, no cargo was discharged.

Q. Why? A. For the same reason.

Q. Did you receive a request from anyone to discharge (14) any of the cargo which had been loaded between the 3rd of September and about the 10th of December? A. No.

Q. How long did the strike last, Captain Masse? A. I think it was 107 days.

Q. Until what day? A. December 7th.

Q. Was this a strike localized to the crew and men of the "SS Hawaiian", or the American-Hawaiian Steamship Company, or was it a general strike, do you know? A. A general strike for all ships that had those union men working for them.

Plaintiffs' Exhibit 3 (In Part).

Joseph H. Masse—For American-Hawaiian Steamship Company—Direct.

Q. Do you know how the strike was declared—was the strike call issued from the main union office or the local office of the union? A. I believe it was all from San Francisco—the main office.

Q. Were there watchmen on the ship during these 107 days, to watch? A. Yes.

Q. Do you know who hired the watchmen? A. Hansen & Tidemann, the agents for Isbrandtsen.

Q. The 107 days period expired when? A. I believe the date was December 7th.

* * * * * * * * *

(15) Q. Do you know from whence their information came? A. No. I don't know that.

Q. What occurred on the 7th of December 1948, with respect to the "SS Hawaiian"? A. Well, the crew returned to the vessel, and we got up steam and returned to our dock in Westwego—that is, returned to Isbrandtsen's dock at Westwego—to resume loading.

* * * * * * * * *

(16) Q. Describe the continuation of the loading at New Orleans. A. We went to the Westwego dock and picked up the rest of the cargo at Westwego, and the vessel shifted to Dumeine Street wharf in New Orleans, and we resumed, or continued loading at that dock.

Q. Who did the loading and the stowing of the cargo? A. The local stevedores for Hansen & Tidemann, as agents.

Q. And you merely supervised the stowage with respect to the stability and trim of the vessel? A. Yes.

Q. Do you remember what day you completed loading at New Orleans? A. On December 19, 1948.

Q. And did the vessel sail? A. The vessel sailed from New Orleans for Tampa, Florida.

* * * * * * * * *

(17) Q. When did the vessel sail from Tampa? A. On December 24th, Christmas evening.

Plaintiffs' Exhibit 3 (In Part).
Joseph H. Masse—For American-Hawaiian Steamship Company—Direct.

Q. And what was her destination? A. Her destination was Port Said, Egypt, the first port.

Q. And on whose orders did the vessel sail for Port Said? A. On the charterer's orders.

Q. Where did you receive those orders, did you say, Captain? A. There is a change there now, Captain Kacocha took command of the ship.

Q. Where and when did Captain Kacocha take command? A. Captain Kacocha took command of the ship around the 1st of December at New Orleans, a little after the 1st.

Q. Was Captain Kacocha the regular master of the "SS Hawaiian"? A. Yes, he was the regular master.

* * * * * * * * *

(18) Q. On what day did the vessel arrive at Bombay? A. The vessel arrived at Bombay on the 25th of February, 1949.

Q. To what dock did the vessel proceed? A. I believe it was Pier 17 in Bombay.

Q. Do you know who owns and operates Pier 17 in Bombay? A. I believe it is a Government owned dock.

* * * * * * * * *

(19) Q. Describe the discharging process, please, Captain. A. They discharged the cargo in the usual practice.

Q. Who did? A. The stevedores.

Q. Did you see anything wrong with the method used? A. No.

Q. Did you see the cargo as it went out? A. Yes.

Q. Did you observe any damage to the cargo as it was discharged? A. I didn't see any damage to the cargo that was out of the ordinary wear and tear of handling.

* * * * * * * * *

(20) Q. Was all the caustic soda carried on this voyage discharged at Bombay? A. Yes.

* * * * * * * * *

Plaintiffs' Exhibit 3 (In Part).
Joseph H. Masse—For American-Hawaiian Steamship Company—Cross.

(21) Cross Examination by Mr. Scott:

* * * * * * * *

(22) Q. I show you another paper, and ask you if you know what that is? A. Yes, this is the stowage plan made up by Isbrandtsen's agents, Hansen & Tidemann.

Q. Did you ever see it before? A. Not this sheet of paper, no, sir.

Q. Did you see a copy of it? A. Wasn't that photostatic plan a copy of this—that plan you have—I saw that plan, I saw that photostatic copy.

Q. That represents a loading of this vessel? A. As far as I can determine, this represents the loading of the vessel, yes, sir.

Mr. Scott: I ask to have it marked for identification.

It is marked Isbrandtsen Exhibit A for identification.

Q. Who employed and paid the crew of this vessel? A. The American-Hawaiian Steamship Company.

Q. Who determined the working hours and working days? A. The working days were determined by the union, (23) by union agreement with the steamship company.

Q. Does that apply to working hours? A. That is for the crew members?

Q. Yes. A. Yes, they are all under agreement between the unions and the steamship company.

Q. Who dealt with the crew respecting labor matters—did you deal with them on behalf of the owners? A. Well, I guess I should say yes.

* * * * * * * *

Plaintiffs' Exhibit 3 (In Part).
Joseph H. Masse—For American-Hawaiian Steamship Company—Cross.

Q. What date then did you finish discharging? (24) A. Finished discharging on the morning of March 13th.

Q. So all the cargo carried to Bombay on this voyage was discharged during the period from March 3rd to 13th inclusive, is that correct? A. Yes. I see an entry here on March 12th, at 8.20 P. M., all cargo out of No. 4 hatch, all Bombay cargo out of vessel, stevedores leave ship.

Mr. Tillinghast: That is March 12th?

The Witness: That is March 12th instead of the 13th. On the 13th the ship departed at 9.45 A. M., and the cleaning gang working through the night, but the cargo was out of the vessel at 8.20 P. M. on March 12th.

Q. Captain, you referred to an entry—will you state what that entry appears in? A. The entry appears in the rough bridge log of the steamship "Hawaiian."

* * * * * * * *

(27) Q. Do you remember the speed capacities of the "SS Hawaiian"? A. Her speed was about 11½ to 12 knots, but I think our charter here only called for 10 knots.

Q. When you left New York, did you have any cargo aboard? A. No.

Q. Did you have a full crew? A. Yes.

Q. Was there a roster of the crew kept? A. Yes.

(28) Q. Where would that be? A. That would be with the United States Shipping Commissioner.

Q. Were all of your crew members union men? A. Yes.

Q. How about your officers? A. The same thing.

Q. Including yourself? A. Yes.

Q. What union did you belong to at the time, Captain? A. At that time I didn't belong to a nion. All the officers belonged to the Master, Mates & Pilots at that time.

Plaintiffs' Exhibit 3 (In Part).
Joseph H. Masse—For American-Hawaiian Steamship Company—Cross.

Q. You mean you did or did not belong to the Master, Mates & Pilots? A. I did not belong at that time.

Q. Did you subsequently join that union? A. Yes.

Q. Were you a member of any union at the time of this particular voyage? A. No, sir.

Q. Did you have any knowledge of any sort that a strike had been threatened and enjoined by a Federal Court on the Pacific Coast, involving your employers, American-Hawaiian Steamship Company and several unions as well as other shipping companies?

Mr. Knecht: I object to the form of that question.

A. I had no knowledge of any impending strike, and knew nothing of this Court injunction you mentioned.

Q. Will you tell us your whereabouts immediately prior to the time you assumed command of the "SS Hawaiian"? (29) A. I believe I was working in New York City.

Q. During the period from June 1st, we will say, to August 19th? A. I am not sure whether I was home during that period or not.

Q. By home do you mean your residence in Massachusetts? A. Yes, my home in Massachusetts, that is right.

Q. In connection with your occupation as a sea captain, did you keep abreast of such things as maritime strikes? A. That is a difficult question to answer, but I guess it is, yes.

Q. Were American newspapers available to you at your home in Massachusetts during that period? A. Yes.

Q. Did you read them usually? A. Yes.

Q. Were you, during that time, in touch with maritime activities that would bring you to New York or to other ports? A. Yes.

Q. During that time, did you have occasion to talk with any men who followed the sea or were connected with maritime activities? A. Yes.

Plaintiffs' Exhibit 3 (In Part).
Joseph H. Masse—For American-Hawaiian Steamship Company—Cross.

Q. Based on all of those things, and refreshing your recollection, can you tell us whether you had heard or knew from any source of a threatened strike in the maritime industry? A. No, this strike was a surprise to most everybody. I didn't hear anything prior to the time the men walked off the ship about an impending strike or (30) threatened strike.

Q. That is your testimony, Captain Masse, after having reflected on it? A. Yes..

Q. Do you mean particularly that it was a surprise to you as well as to most anybody? A. It was a surprise to me, and people that I had been talking to after the thing had broken mentioned that they were surprised that the strike was called.

Q. Did you ever talk to anybody about it prior to the time that the men walked off the ship, as you testified to? A. No, sir.

* * * * * * * *

(35) Q. Did any representatives of any labor unions come aboard the ship when you arrived in New Orleans? A. Not to my knowledge.

Q. Did any labor representative come aboard the ship at any time during the stay on New Orleans? A. Not to my knowledge.

Q. Do you mean by that— A. That I didn't see them, and didn't hear of them, didn't see them or hear that they (36) were aboard.

Q. Continuing with the loading schedule: When did you commence loading on September 1, 1948? A. (Referring to log) At 8 A. M. on September 1st.

Q. And what time did you stop loading for the day on that date? A. At 1800.

Q. That would be 6 P. M.? A. 6 P. M.

Q. When did you next resume loading? A. At 7 A. M. on September 2nd.

Plaintiffs' Exhibit 3 (In Part).
Joseph H. Masse—For American-Hawaiian Steamship Company—Cross.

Q. When did you cease loading on September 2, 1948? A. At midnight knocked off all gangs for supper.

Q. When did you again resume loading? A. At 1 A. M. on September 3rd.

Q. And when did you cease loading on September 3rd? A. At 10 A. M. on September 3rd.

Q. At whose instructions did loading cease on September 3rd? A. I know on that schedule you have there it says "Master", but that schedule don't mean a thing—here is the official logbook here.

Q. The question is: At whose instructions did loading cease? A. The firemen refused to supply any more steam for the loading operations, and consequently the stevedores knocked off.

Q. How was it communicated to you, if it was, that the firemen would not supply any more steam, at 10 A. M.? (37) A. One of the firemen told me.

* * * * * * * * * *

(38) Q. Did you know this fireman to be a union delegate or labor representative of the engineroom gang in any capacity? A. I know he was one of my firemen, but his capacity, as far as the union is concerned, I don't know—I have forgotten whether it was the ship's black gang delegate that gave me this information or whether it was one of the other firemen, I don't know which one of the three firemen told me.

(39) Q. As master of the ship, did you consider yourself in a position to order him or the firemen to resume or continue their work? A. They were under orders to continue supplying steam but they refused to supply the steam because they were going on strike.

Q. Did you make any other effort to verify whether they were on strike, other than the statement of this particular fireman whom you cannot identify or remember? A. They all packed their clothes that day and went off the ship, which is a form of a strike, isn't it?

Plaintiffs' Exhibit 3 (In Part).
Joseph H. Masse—For American-Hawaiian Steamship Company—Cross.

Q. (Repeated) Did you make any other effort to verify whether they were on strike, other than the statement of this particular fireman whom you cannot identify or remember? A. Yes, I spoke to other crew members.

Q. Can you either identify them individually or describe who they were with respect to their jobs on the ship? A. Well, they were my crew members and they had a job to perform, and they said they were going out on strike, and that was it.

Q. Will you tell us just when and where those conversations took place? A. No, I can't tell you that, I can't determine just what part of the vessel I was standing at the time.

Q. Can you tell us with respect to time when such conversations took place? A. Yes, between 9 and 10 A. M. on the morning of September 3rd.

* * * * * * * *

(46) Q. Were you present on the ship during September 2nd and the night thereof? A. Yes.

Q. The firemen in your crew, I believe you have stated, were members of the Marine Firemen, Oilers & Wipers—is that the same as the Pacific Coast Marine Firemen, Oilers, Water-tenders & Wipers Association? A. That is right.

(47) Q. An independent union? A. That is right.

Q. The cooks and stewards on your vessel at the time were, as I think you have stated, members of the National Union of Marine Cooks & Stewards, is that correct? A. That is right.

Q. And that is the CIO Union? A. That is right.

* * * * * * * *

(48) Q. Did the stevedore ever talk to you at all about an impending strike? A. No.

Q. Or did he talk to you about any strike meeting? A. The stevedore, no.

Q. Did any of the people from Hansen & Tidemann talk

Plaintiffs' Exhibit 3 (In Part).
Joseph H. Masse—For American-Hawaiian Steamship Company—Cross.

to you about any strike meetings or impending strike? A. Not before—not prior to September 3rd.

Q. Was any discussion of any strike situation had by you with anybody, prior to September 3rd? A. Prior to September 3rd I didn't know a thing about any strike or impending strike.

* * * * * * * * *

(55) Q. Are you acquainted with Mr. Burke's handwriting? A. Yes. That looks like Mr. Burke's signature.

Mr. Tillinghast: You are familiar with Mr. Burke's signature?

The Witness: Yes.

Q. Can you then identify that document and tell us what it is?

Mr. Tillinghast: If you know.

A. This document is prepared by the dock force and is given to the mate at the end of the day, which tells him the commodities that went into each of the hatches that they are loading and the day's tonnage. It is just the glorified form of a tally sheet.

Q. It is headed up "Mate's daily report", is it not? A. Yes.

Q. And it is signed at the bottom by William G. Burke, first mate? A. Yes.

Mr. Dunn: I ask to have it marked for (56) identification.

It is marked as Plaintiffs' Exhibit 2 for identification (six sheets).

* * * * * * * * *

Plaintiffs' Exhibit 2 in Masse Deposition.

(Mate's Daily Reports; 6 Sheets)

(See opposite ☞)

* * * * * * * * *

Note:

Page 97a (6sheets) is on card 7

Plaintiffs' Exhibit 4 (In Part).
John Hansen Dalton—For Plaintiffs—Direct.

(58) Q. Is it a correct statement of your position to state that you had no knowledge whatever of any impending or threatened strike, or strike situation, prior to September 3rd at 10 A. M. when the fireman came and reported to you that they were on strike? A. That is true.

* * * * * * * *

Plaintiffs' Exhibit 4 (In Part).

(Dalton Deposition)

* * * * * * * *

(593) JOHN HANSEN DALTON called by and on behalf of the Plaintiffs, being first sworn by a Notary Public, was examined and testified as follows:

* * * * * * * *

(594) Direct Examination by Mr. Dunn:

Q. What is your present occupation or position? A. Well, I am a steamship agent.

Q. What is the name of your firm, please? A. The present name is Tidemann & Dalton, Inc.

Q. Is that firm the successor to Hansen & Tidemann, Inc.? A. There are two Tidemann & Dalton, Inc. firms, one is operating under a Louisiana charter and the other is operating under a Texas charter, both operating with the same name. The one operating under the Texas charter is the mother company, the Louisiana corporation was formed from assets of Tidemann & Dalton Corporation, a Texas corporation, which originally was Hansen & Tidemann, Inc.

Q. So that, regardless of details, you are a continuation (595) of the original business? A. I would assume so; I don't know the legal aspects of it.

Plaintiffs' Exhibit 4 (In Part).
John Hansen Dalton—For Plaintiffs—Direct.

Q. Prior to the formation of the firm, you have just mentioned, what was your occupation or petition? A. Steamship agent.

Q. Were you then with Hansen & Tidemann, Inc.? A. That's correct.

Q. Would you tell us how long your association with Hansen & Tidemann, Inc. continued? A. From the time they originally organized in 1936.

Q. Until— A. Well, till the present day or until we changed the name to Tidemann & Dalton, Inc.

Q. And what was your position with Hansen & Tidemann, Inc. in 1948? A. I was a vice-president and secretary.

Q. Does your experience in the Maritime Industry date back to 1936 or even prior to that? A. Prior to that.

* * * * * * * *

(596) Q. Now, generally speaking, in your position as a steamship agent, you, of course, have to deal constantly with steamship companies and ships and owners? A. That's correct.

Q. And with other steamship agents, I take it? A. From time to time.

Q. Deal with underwriters at all? A. It depends on the circumstances; it depends on what you mean by underwriters.

Q. Well, do you have anything to do with the underwriters' inspectors? A. You mean the Board of Underwriters of New York, for instance?

Q. Any underwriters, just a general question? A. I don't know the definition of underwriters. There is an organization known as the Board of Underwriters of New York, or New York Board of Underwriters, I don't know which, who has certain inspectors who supervised (597)

Plaintiffs' Exhibit 4 (In Part).
John Hansen Dalton—For Plaintiffs—Direct.

the proper loading and discharging in the case of vessels. Those inspectors we have daily dealings with. As far as I know, there are other underwriters, different insurance companies, but I don't know very much about those people.

Q. You also have occasion to deal regularly with stevedoring companies? A. Yes.

Q. And with freight forwarding people? A. Yes.

Q. And with ships' captains and ships' personnel? A. I would say yes, qualifying that that my position is an executive position, so I may possibly not deal directly with each ship's captain or ship's personnel.

Q. So that you come into contact, as a part of your business, with most of the specialized branches of the Maritime Industry? A. Generally, yes.

* * * * * * * *

(610) Q. Was your firm the agents, acting in connection with the steamship Hawaiian in New Orleans on or about August 31, 1948? A. If my memory serves me correctly, I believe that we were acting in the capacity of agents for a New York ship operator, not for the owners of the vessel.

Q. What was the position with respect to the vessel of the New York Steamship company for which you were acting? A. As I understood it at that time, the vessel was on time-charter to the particular people we were representing, but of that, I wouldn't be sure. I just understood that was the case.

Q. What was the name of the charterer? A. Isbrandtsen. If he was the charterer, I assume he had the vessel under time-charter, and that was the way I understood it. We were acting as his agent.

* * * * * * * *

Plaintiffs' Exhibit 4 (In Part).
John Hansen Dalton—For Plaintiffs—Direct.

(611) Q. When were you engaged by the Isbrandtsen to act as agents for that ship? A. I wouldn't be able to remember the exact time. If my memory is correct, I believe we were Isbrandtsen's agent during that particular time that you mentioned, in which case we would ordinarily be his agent for any vessel that he controlled.

* * * * * * * *

(612) Q. I show you a paper (hands document to witness), and ask you if that paper came from your office? A. I couldn't answer that. This is not our letterhead. It appears to be an extract of the Port log for the Hawaiian, but I wouldn't be able to say under oath that this paper came from my office. Papers of this nature customarily are made up by us or any other agent on vessels we may be agents for; we and other (613) agents, I assume follow the same procedure.

Q. Will you please read that paper and see if it refreshes your recollection? Take all the time you want, Mr. Dalton? (Hands document to witness.) A. Well, in what way would it refresh my recollection?

Q. The last question concerned the time of arrival of the vessel S/S Hawaiian at the Port of New Orleans? A. Well, it does on this paper. She arrived on August 30, 1948 at 1325 hours past Pilottown—which is not the Port of New Orleans—but arrived at Chalmette, Louisiana which is in the Port of New Orleans at 2015 hours. I mean, that's three and a half or better years ago; I wouldn't know whether this is correct or not.

* * * * * * * * *

(514) (The document referred to was marked Defendant "A" for identification and was offered in evidence.)

Plaintiffs' Exhibit 4 (In Part).

Defendants' Exhibit A to Dalton Deposition.

American SS HAWAIIAN

Port Log—New Orleans, Louisiana

GRT 6,264
NRT 3,835

Master: Captain J. H. Masse

1948

Monday August	30	1325	Passed Pilottown
		2015	Arrived Standard Oil Co. Terminal, Chalmette, La.
			On arrival: Draft: Fwd 11′ 10″ Aft 17′ 0″ Bunkers: 1,400 Barrels Water: 160 Tons Stores, etc.: 100 Tons
		2230	Commenced bunkering
Tuesday August	31	0925	Completed bunkering — bunkers lifted 12,443.48 Barrels Bunker "C" Fuel Oil
		1020	Left Bunker Terminal
		1230	Arrived Westwego Wharf No. 3
		1300	Commenced loading cargo
		1700	Stopped loading cargo
Wednesday September	1	0800	Resumed loading cargo
		1800	Stopped loading cargo
Thursday September	2	0700	Resumed loading cargo
		2400	Knocked off for supper hour
Friday September	3	0100	Resumed loading
		1000	Stopped loading cargo—Master's instructions account strike. Vessel released to Strachan Shipping Co. on orders American Hawaiian Line.

Plaintiffs' Exhibit 4 (In Part).
John Hansen Dalton—For Plaintiffs—Direct.

Saturday September 4 through Monday September 6		No work account strike
Tuesday September 7	1440	Left Westwego Wharf—Orders Strachan Shipping Co.
	1630	Arrived at anchorage at Point
Wednesday September 8 through Wednesday September 15		At anchorage—no work account strike

* * * * * * * * *

Q. Do you have any records, Mr. Dalton, a log or schedule of some sort, of the movements for the "SS Hawaiian" showing the time at each point? A. Apparently so, yes.

Q. Would you consult that and see whether you can then (515) answer the previous question as to when the vessel arrived in New Orleans? A. Shall I answer now?

Q. Yes. A. According to these records, she arrived on August 30, at 2015 hours, 1948, at the Standard Oil Terminal in Chalmette, Louisiana, which, I believe, actually is considered a part of the Port of New Orleans—it's a bunker terminal.

Q. When did they get into a loading wharf? A. The records here are 1230 hours, Tuesday, August 31, 1948, arrived at Westwego Wharf No. 3 and at 1300 hours on the same day they commenced loading cargo.

* * * * * * * * *

(517) Mr. Tillinghast:

Q. Were you furnished with a list of cargo to be loaded at the Port of New Orleans when the vessel arrived? A.

Plaintiffs' Exhibit 4 (In Part).
John Hansen Dalton—For Plaintiffs—Direct.

We would prepare such a list ourselves. We would have a booking sheet reflecting what it was that was booked. That wouldn't necessarily mean all cargo was loaded; wouldn't have anything to do with whether it was actually loaded or not loaded.

Mr. Dunn:

Q. Do you remember whether a large number of drums of caustic soda were to be loaded at Westwego, New Orleans? A. Yes.

* * * * * * * *

(619) Q. Who was the particular stevedore? A. I think it was a firm called New Orleans Stevedoring Company, Inc.

Q. Did they customarily handle the stevedoring for Isbrandtsen vessels? A. To the best of my knowledge, they did all of Isbrandtsen's stevedoring in the Port of New Orleans at that time.

* * * * * * * *

(620) Q. What are the customary regular loading hours in this Port, exclusive of overtime? A. I would say on regular working days, from 8:00 o'clock in the morning until noontime, and from 1:00 o'clock in the afternoon until 5:00.

Q. Was there any overtime work in connection with the loading of the "SS Hawaiian"? A. I didn't hear the last part?

(Question read by the Reporter.)

A. According to these records, yes.

* * * * * * * *

Plaintiffs' Exhibit 4 (In Part).
John Hansen Dalton—For Plaintiffs—Direct.

(621) Q. Please tell us on what days overtime was worked on that particular vessel? A. From these records, I can tell you what time overtime was worked before 8:00 o'clock in the morning and after 5:00 in the afternoon, but I don't know whether any of these days are holidays. Your log wouldn't show that, just shows the time the vessel worked. The log does not show the word "overtime," just shows (622) the period worked.

Q. Be good enough to tell us what you can. A. All right. I would say, in my opinion, on September 2, Thursday, 1948, the vessel apparently worked—excuse me, on September 1, Wednesday, 1948, she apparently worked overtime from 5:00 P. M. to 6:00 P. M. The following day, Thursday, September 2, she apparently worked overtime from 7:00 A. M. to 8:00 A. M., from 5:00 P. M. to 6:00 P.M., and from 7:00 till midnight. I will have to qualify that; if the stevedore ordered what we call the night gangs, they would ordinarily come to work at 6:00 P.M.; so, that hour from 6:00 to 7:00 would not be lost. If he worked his regular gang straight through, they would usually knock off at 6:00 P. M. and come back to work at 7:00. My log shows work from 7:00 until midnight, but that's always understood to mean exclusive of supper hour and lunch hour and what have you.

Q. On September 3rd? A. On September 3rd, Friday, he commenced working at 1:00 A. M., and worked till 10:00 A. M. that morning.

Q. Was the loading operation at Westwego completed at that time? A. The entire loading operations?

Q. Yes. (623) A. I don't think so, no.

Q. Do you want to consult your records further because I would like a definite answer? A. I could consult my records if you so desire. It would take some time, but my memory is reasonably clear on that point except that—

5M-7-47-H

HANSEN & TIDEMANN, INC.

STEAMSHIP AGENTS

Aug 24 48

MATE'S DAILY REPORT—Pier No. Wes. 90

Received alongside in apparent good order the following cargo, marked as below, subject to all conditions and exceptions contained in the Ocean B/L of the Steamer or Steamship Line.

BENT No.	WHERE FROM	MARKS	QUANTITY	REMARKS
#1 Hold				
PEN	760 V	Muchraj	37	D/Caustic Soda Bombay
CO	9062		11	- do - do
#2 Hold				
CEQ	8V306		11	- do - do
DRGW	67848		11	- do - do
KNG	106V33		11	- do - do
#4 Hold			34	
IC	17421		11	- do - do
FJE	60843		11	- do - do
MIL	2304V		11	- do - do
#V	Hold			
WP	20437		11	- do - do
NP	50157		11	- do - do
PEN	10116		11	- do - do
#1	V.T.	Tons		
#2	97	do		
#4	104	do		
#V	58	do		
		342	Tons	

Vessel Hawaiian for Los Angeles Received Today 342

Wes. 90 Aug 24 1948 Received Previously

Cargo Officer William F. Burke TOTAL 342

5M-7-47-H.

9/1/48

HANSEN & TIDEMANN, INC.

STEAMSHIP AGENTS

MATE'S DAILY REPORT—Pier No. Westerveg

Received alongside in apparent good order the following cargo, marked as below, subject to all conditions and exceptions contained in the Ocean B/L of the Steamer or Steamship Line.

BENT No.	WHERE FROM	MARKS	QUANTITY	REMARKS
# 1	Hold	Mucbraj		
PENN	76053		197	Drums of Caustic/s Bombay
PM	82979		115	
NW	43896		1N	
NH	33296		1N	452
# 2	Hold			
IHB	10296		1N	
ACL	07292		1N	
ATSF	14060		1N	
NKP	22110		1N	
RI	147443		10	10
# 4	Hold			
WP	187374		114	
NYC	16172		1N	
NYC	17844		1N	
# 5	Hold		3	
NYC	121194		112	
MILW	71687		1N	
RDG	10514		14	
PRR	6703		1N	
CNW	84234		1N	
PRR	10144		1N	
PRR	78106		1N	
			3	
	#1-Hold -	134 Tons		
	#2-Hold -	175		
	#4-Hold	114		
	#5 Hold	258		
		681-Tons		

Page #1

bl Stuffing

Vessel HAWAIIAN for Bombay

Sept 1 1948

Cargo Officer Wm. J. Burke Mate

Received Today 681 Tons

194 Received Previously 342 Tons

TOTAL 1023 Tons

5M-7-47-H

HANSEN & TIDEMANN, INC.

STEAMSHIP AGENTS

(Page 29 - Sheet 3)

Sept 1st 1948

MATE'S DAILY REPORT—Pier No.....

Received alongside in apparent good order the following cargo, marked as below, subject to all conditions and exceptions contained in the Ocean B/L of the Steamer or Steamship Line.

BENT No.	WHERE FROM	MARKS	QUANTITY	REMARKS
#-1,	Hold - Square	AUTO THENE NISAT FOR		
W M	√0749	KHOORMSHAR	2	Boxed Vehicles
PENN	34√√√2	IN-TRASIT √	3	√ —
		FA KERTANCH LTD		
# 4	Hold T/D WINGS	BASRAH		→ Boxed Vehicles
RDG	32722	√	8	— —
NYC	71193		6	√ —
NYC	710663		4	
ERIE	107√6		6	
	# 1 - 3 TONS			
	# 4 - 32 TONS			
	35 - TONS			
				Sept 1, 1948
				Sept
				Pag # 2
				√
		# 1 - Hold KHOORMSHAR		
		# 4 for Basrah		

Vessel HAWAIIN Received Today 716

..... 194 Received ~~Previously~~ 342

Cargo Officer Wm. G. Burke 1st Mate TOTAL 1058

5M-7-47-H.

Sept 2nd 1948

HANSEN & TIDEMANN, INC.

STEAMSHIP AGENTS

MATE'S DAILY REPORT—Pier No. Westwego

Received alongside in apparent good order the following cargo, marked as below, subject to all conditions and exceptions contained in the Ocean B/L of the Steamer or Steamship Line.

BENT No.	WHERE FROM	MARKS	QUANTITY	REMARKS
#1 Hold.				
PM	82976	MACKMAN	30	O/carrier Soda - Bombay
CRP	22857 - Split		80	
CRP	2285 of Overlap O/wings		35	
#2	Hold			
RI	147443		6	
TNO	14988		1	
#4	Hold-FWD			
DLW	11503		11	
CRF	22877		11	
NP	26900		11	
NP	26993		11	
LN	15134		11	✓
ATSF	8807		11	
CN	31121	114	11	
#5	Hold			
PRR	78106	100	11	
ITC	6499		11	
TNO	14912		11	
NW	46060		11	
			6	
	#1 - Hold	97 TONS		page #1
	#2 - Hold	68 - TONS		
	#4 - Hold	279 - TONS		
	#5 - Hold	115 - TONS		See page #2
		519 - TONS		

Vessel HANNAH for BOMBAY

Sept 2nd 1948 194

Cargo Officer Wm. T. Burke 1st mate

Received Today

Received Previously

TOTAL

5M-7-47-H

HANSEN & TIDEMANN, INC.

STEAMSHIP AGENTS

MATE'S DAILY REPORT—Pier No. Westwego

Received alongside in apparent good order the following cargo, marked as below, subject to all conditions and exceptions contained in the Ocean B/L of the Steamer or Steamship Line.

BENT No.	WHERE FROM	MARKS	QUANTITY	REMARKS
#1	Lower Hold	Auto Thereon S/T For Khorramshahr		
Pen	3 4 5 5 2	✓	3	Pkgs Autos & Parts
B & O	262744	✓	✓	" " "
#1	Or Cop Deck Fwd.			
W H	50749	✓	2	" " "
#2	Hold Square			
B & O	262744	✓	9	" " "
Pen	3 4 5 5 2	✓	8	" " "
W H	50749	✓	2	" " "
			29	= 56 TONS
		F A Nettaneh & Co Ltd		
		Basrah for Bagdad		
#1	Or Cop Deck	Various Cars	22	Pkgs Auto Parts
#2	Lower ✓	✓	18	" " "
#4	Hold	✓	10	" " "
✓	✓ D	✓	19	" " "
#5	Hold	✓	16	" " "
✓	✓ D	✓	8	" " "
#1	Lower Deck	✓	11	" " "
#2	Hold	✓	16	" " "
#4	✓	✓	21	" " "
#5	✓	✓	23	" " "
#8	Lower Deck	✓	18	" " "
			192	= 247 Tons
	Page #2 Sept 2nd/48			

Vessel Hawaiian for Various Received Today 822

Westwego Sept 2 & To 7 am 9/3 194 8 Received Previously 1058

Cargo Officer Wm. H. Burke 1st Mate TOTAL 1880

5M-7-17-H.

HANSEN & TIDEMANN, INC.

STEAMSHIP AGENTS

(Page 93-Sheet 6)

MATE'S DAILY REPORT—Pier No. West 7 & 9

Received alongside in apparent good order the following cargo, marked as below, subject to all conditions and exceptions contained in the Ocean B/L of the Steamer or Steamship Line.

BENT No.	WHERE FROM	MARKS	QUANTITY	REMARKS
#1 & TD		~~Basra to Bagdad~~ ~~S.A. Exp.~~		
		F A Kettaneh & Co Ltd		
		Basra & for Bagdad		
	Various Cars		✓	Pkgs Autos & Parts
#2 & TD	✓		6 ✓	✓ ✓
#4 - ~~do~~ ~~Hold~~	✓		2 ✓	✓ ✓
#5 Hold	✓		4 ✓	✓ ✓
			17 = 32 TONS	

Vessel Hawaiian for Various Received Today 32

Sht 3 of 7 1918 Received Previously 1880

Log of the S. S. Hawaiian Voy. 6 P.W Date Sept 1, 1918 From Wharf, Wednesday 1918 From Wharf #3 Towards Westwego La.

HOUR	KNOTS	COURSES	WINDS	SEA	BAR.	THERMOMETER AIR WET	THERMOMETER AIR DRY	THERMOMETER WATER	LOOKOUTS	RUNNING LIGHTS WHEN LIGHTED	RUNNING LIGHTS WHEN EXT.	WATCH OFFICER		RUNNING LIGHTS WHEN LIGHTED	RUNNING LIGHTS WHEN EXT.	WATCH OFFICER	REMARKS
A.M.																	
1													Mate M				Mate Mate T.A. Williams on duty. No cargo worked during night. Frequent inspections made about ship.
2													night				
3												3rd Am	Mate M			3rd Am	Mate Mate relieved by ships officer.
4		Calm			2993	72	75					8:00 Am	4 ga			8:00 Am	4 gangs Longshoremen abd. loading #1-2-4&5 hatches.
5												10 30 Am	Steve			10 30 Am	Stevedores K.O. Loading #1&2 close to look of damage.
6	11 45 Am	Mr Tillerson A.B.S. surveyor; Strachan Port Engr.										12:00 N	Repai	Port Engr.		12:00 N	Repair gang starts work on shaft tunnel.
7		Mr Camelle & Ferran & Co. Repair contractor abd.										12:00 N	Steve	bd.		12:00 N	Stevedores K.O. for lunch.
8		surveying hole in shaft alley tunnel										1300	Steved			1300	Stevedores resume work in #4 & #5
9												1330	Steved			1330	Stevedores resume work in #1&2
10		Draft 6 00 Am															
11		F 17 06															
12		A 20 10															
		M 18 09															
P.M.																	
1												1700	Mate M			1700	Mate Mate relieved ships officer
2												1800	Steved			1800	Stevedores K.O. for night
3													Draft 6 00 pm				
4												1950	Repair			1950	Repair men (2) cutting on patch plate on shaft casing. welding
5													F 15 11				same (precaution taken against fire starting from welding sparks)
6												2100	A 21 09			2100	finish cut on patch plate #4 WH propeller Tunnel & hose
7													M 20 04				tool same from inside Tunnel O K
8		Sky 2	2994	73	77								Repair				Repair men leave ship
9													Mate				Mate Mate T.A. Williams on duty. Frequent inspections about ship.
10												2400	T will			2400	T Williams relieved by mate Mate F.H. PARDY
11																	

COURSE AND DISTANCE	LAT. BY OBS.	LONG. BY OBS.	LAT. BY ACCT.	LONG. BY ACCT.	DIST. PER LOG	CURRENT	VARIATION	DEVIATION	CURRENT	VARIATION	DEVIATION

BEARING AND DISTANCE AT NOON

J. B. Masse MASTER

MATE

3

No. A-17344

CERTIFICATE OF LOADING

BUREAU OF INSPECTION

—OF—

The Board of Underwriters of New York.

New Orleans, La. DECMEBER 19, 1948

This is to Certify, *That the* AM. S.S. "HAWAIIAN"

whereof C. A. KACOCHA *is Master, of* 3835 *Net Tons Measurement,*

built at PHILADELPHIA PA *in* 1919 *bound for* PERSIAN GULF AND INDIA

has been under the inspection of the undersigned at this port from time to time during the course of her loading; that the stowage, so far as it came under the observation of the undersigned, was in accordance with the rules of The Board of Underwriters of New York.

THIS CERTIFICATE IS NOT A CERTIFICATE OF SEAWORTHINESS

PARTICULARS OF CARGO LADEN.

DRUMS CAUSTIC SODA
CASES AUTO AND PARTS
BAGS SODA ASH
DRUMS LUBE OIL

MISC. GENERAL

DECKLOAD CERTIFICATE ISSUED: S-2286

Total *Bush., equal to* *Tons.*

Draft of water loaded, *ft.* *in. forward,* *ft.* *in. aft.* *Freeboard,* *ft.* *in.*

MEAN DRAFT **ft.** **in.**

J. C. Compliee *Surveyor.*

This Certificate is issued on the conditions that while the Officers and Committees of the Board use their best endeavors to insure that the functions of the Board are properly executed, neither such Officers nor such Committees, nor the Board are under any circumstances whatever to be held responsible for any inaccuracy in any report or certificate issued by the Board or its surveyors, or for any error of judgment, default, or negligence of the surveyors or other employees or representatives of the Board.

This certificate covers only the cargo herein described as having been loaded at New Orleans, La., and under no conditions is it to be deemed to cover any other cargo whether loaded at New Orleans, La. or any other port. If the vessel has loaded or later loads other cargo, for the same voyage, at a United States Port, this certificate of loading shall not be valid unless such cargo, whether loaded at New Orleans, La. or some other United States Port, shall have been, or shall be, loaded under the supervision of a Surveyor of this Board and if loaded at any foreign port, the certificate of loading shall not be valid unless such cargo is loaded in accordance with the rules and regulations of this Board. This certificate shall not be valid if upon sailing from any loading port and/or any fueling port and/or during any part of the voyage, the vessel's draft shall exceed that permitted by the law of her flag and/or the draft designated for the vessel in the Classification Society in which she may be classed.

Plaintiffs' Exhibit 4 (In Part).
John Hansen Dalton—For Plaintiffs—Direct.

as clear as memory can be—that the complete operation at Westwego was not finished, which is indicated by this record that eventually she returned to Westwego and it says in the record, "Resumed loading, Westwego."

Q. Is there any doubt in your mind, Mr. Dalton, on the point as to whether the operation at Westwego was completed when she stopped loading on September 3? A. No, there is no doubt in my mind.

Q. Then, we won't bother— A. There would be a doubt if you asked me exactly what quantity of cargo was either left or not left.

Q. But there was some cargo? A. There was some cargo left.

Q. Why did the vessel stop loading at that time? A. According to these records, at 10:00 A. M., Friday, September 3, reading from the record, "Stopped loading cargo on master's instructions account strike. Vessel released to the Strachan Shipping Company on orders of the American-Hawaiian Line"—

(624) Q. Do you have an entry as to when loading was eventually continued at Westwego? A. Well, this pencil memorandum that's attached to this typewritten record indicates that the vessel returned to the Westwego Wharf on Decembor 9 at 1830 and that she resumed loading on December 13 at 0800.

Q. Does the record you are referring to show an existence or continuation of the strike during that period which intervened between loading operations? A. You mean from the time she stopped until she went back to Westwego?

Q. Yes.

. . . . . .

(637) Q. Mr. Dalton, I show you six sheets headed up "Hansen & Tidemann, Inc., Steamship Agents, Mate's

Plaintiffs' Exhibit 4 (In Part).
John Hansen Dalton—For Plaintiffs—Direct.

Daily Report—Pier No, Westwego," on the reverse side of which is marked "Plaintiffs' Exhibit 2 for identification, May 29, '51."

I ask you to examine it and identify it for us if you can? A. (Examining document) I would say it is a copy of—well, it says "Mate's Daily Report." I think it means, to my company, that it is a copy of the list of cargo loaded aboard the ship daily and receipted for by the mate of the ship. Is that all right? Is that enough?

Q. Can you so identify it. A. Yes.

Q. Did the original of this photostat originate in your file? A. I would say yes, and our records indicate it was mailed to the operator of the vessel in December of 1950; the originals.

Q. That is to Isbrandtsen Company in New York? (638) A. Yes.

Mr. Dunn: I ask that the exhibit be marked "Plaintiffs'-1 Exhibit-1" for identification on this date.

(The document referred to was marked "Plaintiffs' Exhibit-1" for identification,)

Q. I now show you a photostat of a sheet which is already marked "Isbrandsten Exhibit-A" for identification, May 29, 1951, and ask you if you can identify it for us? A. (Examining document) I would say that is a stowage plan of all cargo loaded aboard this vessel. As there is no signature on it, I don't know whom in our organization prepared it, but it is apparently prepared by us.

Q. Did the original of that stowage plan originate in your file? A. I can't answer that.

Q. In other words, is this a photostat of a document which you have had in your file? A. I would say yes.

Mr. Dunn: I ask that it be marked "Plaintiffs' Exhibit-2" for identification as of this date.

Plaintiffs' Exhibit 4 (In Part).
John Hansen Dalton—For Plaintiffs—Direct.

(The document referred to was marked "Plaintiffs' Exhibit-2" for identification.)

Q. I show you a letter which is bound with many other (639) documents in your file, which is apparently on the stationery of "New Orleans Stevedoring Company," dated September 2, 1948, addressed to your self and signed by Robert T. Smith, Vice-President & General Manager for New Orleans Stevedoring Company, Inc., and ask you whether or not that letter was regularly received by you and placed in your file? A. I would say so.

Mr. Dunn: I ask that this letter be marked as "Plaintiffs' Exhibit-3" for identification.

(The document referred to was marked "Plaintiffs' Exhibit-3" for identification.)

Plaintiffs' Exhibit 3 to Dalton Deposition.

NEW ORLEANS STEVEDORING COMPANY
INCORPORATED

Phone
RAymond 8151

2012-14 American Bank Building
New Orleans 12
September 2, 1948

Mr. J. Dalton, Vice President
Hansen & Tidemann, Inc.
Carondelet Building
New Orleans 12, Louisiana

Re: SS "Hawaiian"

Dear Mr. Dalton:

This will confirm our telephone conversation of yesterday wherein we advised you that there is a possibility of

Plaintiffs' Exhibit 4 (In Part).
John Hansen Dalton—For Plaintiffs—Cross.

being able to sail this vessel from New Orleans Saturday afternoon, weather permitting, at an overtime cost of approximately $1,000.00 to $1,500.00.

In giving you this estimate please bear in mind the difficulty we are encountering in loading the vessel. Due to her construction the parcels of boxed automobiles and hogsheads of tobacco are confronting us with a serious stowage problem and we could possibly encounter unexpected delays in stowing the large boxes of automobiles and trucks and the progress we will make when we start loading them cannot be determined at this time.

We are now chiefly concerned with getting all the cargo on board and in order to do so we cannot concern ourselves too much with despatch even though it could possibly mean a financial loss to ourselves as we understand the gravity of the situation should any cargo be shut out.

Yours very truly,

NEW ORLEANS STEVEDORING CO., INC.
ROBERT T. SMITH
Robert T. Smith
Vice President & General Manager

RTS/akk

* * * * * * * *

(652) Q. In connection with the booking of all of the cargo of caustic soda, who was acting for the shipper? Colorado Fuel & Iron? A. Well, according to the records apparently it was the shipper's broker, Farrell Shipping Company.

* * * * * * * *

(655) Cross Examination by Mr. Bensel:

* * * * * * * *

(662) Q. Well, now, you have produced, clipped together, a communication dated August 25, 1948, from

Plaintiffs' Exhibit 4 (In Part).
John Hansen Dalton—For Plaintiffs—Cross.

Farrell Shipping Company, addressed to The Texas & Pacific Railroad Company, to which there is clipped what purports to be an On Board Bill of Lading No. 144, 1948. It bears stamped late at the bottom "September 3, 1948." Now, I ask you whether the copy of the communication of Farrell Shipping Company that I referred to was received by your company on or about the date that it (663) bears? A. If that was received by my company?

Q. Yes. A. Yes. That is called "Shipping Instructions." My company should O. K. those instructions before the carrier will deliver the goods.

Q. And I notice that on this two-page communication from Farrell Shipping Company there is a stamp at the bottom of each page starting out in large letters, "O. K. For Delivery" and then some printed matter and it bears the signature of your company, dated August 31, 1948. Is that correct? A. That is right.

Q. Now, there is attached to this communication this copy of the bill of lading. Is that a true and correct copy of the bill of lading that was issued? A. Yes; as far as I know, it is.

Q. For the number of drums specified therein? A. On that particular bill of lading; yes.

* * * * * * * * *

(664) Q. Well, you look at it and tell me whether it is a clean bill of lading? A. Yes, it is a clean bill of lading. There are no exceptions on the bill of lading.

* * * * * * * * *

(665) Q. And the bill of lading, No. 145, is a true copy of the bill of lading—On Board Bill of lading—that was issued? A. To the best of my knowledge; yes, sir.

Q. And was that likewise a clean bill of lading? A. That is correct.

Plaintiffs' Exhibit 4 (In Part).
John Hansen Dalton—For Plaintiffs—Re-cross.

Q. And was the freight paid? A. That, I can assure you.

* * * * * * * *

(687) Re-cross Examination by Mr. Scott:

Q. Mr. Dalton, in 1948, your firm, Hansen & Tidemann, were acting as agents for Isbrandtsen Company, Inc., of New York? A. I don't know whether that is true for the whole year of 1948.

Q. In and after August? A. I know that is true in this particular time of which we are speaking.

Q. In connection with this vessel, the S/S "Hawaiian"? A. Definitely.

Q. Through from August until December of that year? A. I would say yes.

Q. When did this firm cease to be agents for Isbrandtsen? (688) A. I don't know the date. I know the circumstances. That is all.

Q. Well, it did cease to be agents for Isbrandtsen? A. It did cease; yes, sir.

Q. And you and your present firm are not now either agents or representatives of the Isbrandtsen Company? A. On no way, shape or form.

Q. Did Hansen & Tidemann issue any orders for the stoppage of work on this loading of this vessel in the first part of September, 1948? They didn't issue any such orders, did they? A. Are you speaking of the day when the vessel stopped working for a long period of time? We ordinarily would inform the stevedore, in unusual circumstances, to work until 8:00 o'clock or until midnight, or until 10:00 o'clock. But if you are referring to the time when the vessel actually stopped working completely, we had nothing to do with that.

Plaintiffs' Exhibit 4 (In Part).
John Hansen Dalton—For Plaintiffs—Re-cross.

Q. You are referring now to September 3, 1948? A. That is the day when the vessel stopped working completely.

Q. Yes, sir. A. We had no—

Q. You issued no orders? A. Our orders were to the contrary.

Q. You received none from Isbrandtsen? (689) A. No. Our orders from Isbrandtsen were to the contrary.

Q. With respect to bills of lading No. 144 and 145, which have been marked Exhibits "Defendants'—F and H", in this case, which appear to be signed by Hansen & Tidemann, "Per Pro: J. H. Dalton." That refers to you? A. That is correct.

Q. J. H. Dalton? A. That is correct.

Q. You signed those bills of lading? A. I signed the original; yes.

Q. You signed the original bills of lading on the dates specified in the bills? A. Definitely.

Q. At that time were the goods referred to in those bills of lading on board the S/S "Hawaiian"? A. Definitely.

Q. They were on board when the bills of lading were issued and signed? A. Definitely.

Q. Were those bills of lading prepared by Farrell Shipping Company which represented Colorado Fuel & Iron Corporation? A. I can only assume so, as that is customary.

Q. Were they issued and signed by you in the regular course of business? (690) A. Right; that is correct.

Q. And in the regular way? A. That is correct.

Q. Now, after those bills of lading were issued and signed, was any delay in the despatch of that vessel caused by strikes, work stoppages, or other labor difficulties? A. Yes. The records show that the vessel was apparently strike bound for quite a long period of time after the issuance of these bills of lading.

Plaintiffs' Exhibit 4 (In Part).
John Hansen Dalton—For Plaintiffs—Re-cross.

Q. You had no control whatever over that strike? A. No, sir.

* * * * * * * *

(691) Mr. Scott:

Q. After those bills of lading were issued they were delivered by you or your company to Farrell Shipping Company for transmission to Colorado? A. I believe that is correct.

Q. Did you at any time after those bills of lading were issued and so delivered, receive any request from either Colorado or the consignee or the plaintiff in this action for those goods to be removed from the S/S "Hawaiian", to be shipped in any other vessel? A. I don't think so. To the best of my knowledge, no.

Q. You received no such request? A. As far as I can remember, no.

Q. And either from Colorado or from the plaintiff or from the consignee? A. To the best of my knowledge, no. I don't think it would have been possible to discharge them anyway: discharge the goods that were on board that vessel.

Q. You received no request for the discharge? A. To the best of my knowledge, I did not; no, sir.

Q. Did you notify at any time Farrell about any delay? A. In connection with this caustic soda?

Q. Yes, I am talking about this shipment. The shipments referred to in bills of lading 144 and 145? A. I don't recollect. My memory is not clear whether we (692) notified Farrell or not. There would be no necessity of notifying him formally, but it would be proper to notify him more or less informally as his goods were aboard the ship and the bills of lading were issued.

Plaintiffs' Exhibit 4 (In Part).
John Hansen Dalton—For Plaintiffs—Re-cross.

Q. When you say there would be no necessity of notifying him, will you explain what you mean by that? A. Well, I can't see where it would be too interesting to him, in a formal manner. I can see in one way that he should be formally notified as a broker that his goods were not shipped, or that is, that his goods were being delayed on board this vessel when the fact was known to him.

Q. Was the fact known to him? A. It should be. I don't know whether it was or not, but it should be. I would also assume that it was made known to him through my office, and possibly through other sources. Nothing happens on the waterfront in cases like this that everybody in the business doesn't know something about it.

Q. When the strike situation permitted, this vessel was brought back to Westwego dock? A. As far as I know, yes. That was not ourselves or Isbrandtsen, however.

Q. Did you handle it from there on as agents? (693) A. After she was at the dock and turned back to Isbrandtsen, yes.

Q. In the same way? A. In the same way.

Q. In the meantime, it was turned over to Strachan for caretaking? A. Strachan Shipping Company as representatives of the holders of the vessel.

Q. For caretaking purposes? A. That's right.

Q. You know of no other vessel in Port in September, 1948, which was affected by any strike, do you? A. I don't know of any other vessel; no, sir.

Q. After this vessel came back to the Westwego Wharf in early December, was it (handing document to witness)? A. Well, I'd say, this is a pencilled copy. This is not our Port Log. I don't know who made this.

Q. What does your file show when it came back? A. It shows December 9, 1830 hour, she redocked at Westwego.

Q. After that, was this vessel properly loaded and des-

Plaintiffs' Exhibit 4 (In Part).
John Hansen Dalton—For Plaintiffs—Re-cross.

patched at the earliest practicable time? A. You mean after December 9th?

Q. Yes. A. No, because this memorandum indicates it was not until December 13th that she resumed loading, which indicates (694) that apparently the owners, in my opinion, must have been doing something from the 9th to the 13th, I would say, in the way of getting up stream in the boilers and getting the ship back in shape.

Q. Caretaking? A. That is my opinion. I don't know that; I would assume it.

Q. After it got back under your control was it loaded and despatched as soon as practicable? A. I would say so; yes. As a matter of fact, we appear here to have resumed loading on December 13th and she sailed at 6:15 the morning of the 19th.

* * * * * * * * *

Q. I believe you had the days of the week in mind this morning. I believe you said that September 3rd was Friday? A. That would be shown on this Port Log over here. The days of the week are shown on that log as far as it goes.

Q. Will you look at it and see if you can tell what day of the month Saturday would be? A. Saturday, according to this log, is September 4th.

(695) Q. Mr. Dalton, there is nothing unusual about overtime in connection with the loading of ocean going vessels, is there? A. I would say in these days of high expenses it is more usual than unusual; high expenses of ship operating, that is.

Q. And to the extent that it saves time of the ship, it is not a net loss; the extra expenses? A. Sometimes it is a net gain. It is a gain occassionally for the operator, depending on how much money he spends for overtime as against what the ship is costing him for what he is paying for the ship.

Plaintiffs' Exhibit 4 (In Part).
John Hansen Dalton—For Plaintiffs—Re-cross.

Q. Mr. Dalton, you are satisfied that your firm, Hansen & Tidemann, did everything possible within its power to load and despatch this ship at the earliest possible time?

Mr. Dunn: Objected to as to form.

A. Definitely.

Mr. Scott:

Q. So far as you are able to tell us of your own knowledge, any delay was solely from strike, work stoppages, or other labor difficulties? A. I wouldn't—

Q. So far as you are able to tell us from any knowledge that you have? (696) A. I wouldn't specify any delay because that could be any period of time, but the major delay was caused by the work stoppage or strike, or whatever you want to call it.

Mr. Tillinghast:

Q. Would you confine that period that you responded to Mr. Scott's question to the time the crew walked off the "Hawaiian" until loading recommenced? A. All of that cost was beyond our control.

Q. That is the period you have in mind? A. Yes.

Mr. Scott:

Q. That is the period that I intended to ask you about? A. All of that delay was beyond our control whatsoever.

Q. You are speaking now from the time the strike started, on September 3, 1949, until the strike was over, the vessel came back to the Westwego Wharf and was put in shape and turned over to you for reloading? A. That is right.

Plaintiffs' Exhibit 4 (In Part).
Exhibit F to Dalton Deposition and Schedule AO to Plaintiffs' Exhibit 1.

Q. That was caused solely by the strike, the labor stoppage, or labor difficulties; whatever they were? A. Yes, sir.

* * * * * * * *

(697) REDIRECT EXAMINATION

Mr. Dunn:

* * * * * * * *

(698) Q. These particular bills of lading, you say, were issued on September 3rd, after the caustic soda covered by them was all loaded aboard? A. That is definite.

Q. And that was after loading ceased, of the vessel? A. That, I wouldn't know. Do you mean when, the exact moment of the day that the bills of lading were issued?

Q. Yes. A. I have no record. We never keep a record of that. It could have been at 8:00 or 9:00 o'clock in the morning. It could have been later. I would not have a record. I would like to say, however, in any case, whatever time of the day it would be I don't see how I could have refused to issue these bills of lading.

* * * * * * * *

Exhibit F to Dalton Deposition and Schedule AO to Plaintiffs' Exhibit 1.

ISBRANDTSEN LINES
World Wide Carriers of Freight

(Emblem)

26 Broadway
New York 4, U. S. A.

Tel. HAnover 2-3500

Cable Address: "ISBRANDTSEN"

RECEIVED from the Shipper hereinafter named, the goods or packages said to contain goods hereinafter mentioned, in apparent good order and condition, unless otherwise indicated in this bill of lading, to be transported subject to all the terms of this bill of lading with liberty to pro-

Plaintiffs' Exhibit 4 (In Part).
Exhibit F to Dalton Deposition and Schedule AO to Plaintiffs' Exhibit 1.

ceed via any port or ports within the scope of the voyage described herein, to the port of discharge or so near thereunto as the ship can always safely get and leave, always afloat at all stages and conditions of water and weather, and there to be delivered or transshipped on payment of the charges thereon. If the goods in whole or in part are shut out from the ship named herein for any cause, the Carrier shall have liberty to forward them under the terms of this bill of lading on the next available ship.

It is agreed that the custody and carriage of the goods are subject to the following terms on the face and back hereof which shall govern the relations, whatsoever they may be, between the shipper, consignee, and the Carrier, Master and ship in every contingency, wheresoever and whensoever occurring, and also in the event of deviation, or of unseaworthiness of the ship at the time of loading or inception of the voyage or subsequently, and none of the terms of this bill of lading shall be deemed to have been waived by the Carrier unless by express waiver signed by a duly authorized agent of the Carrier:

ON BOARD

Ship: S/S HAWAIIAN. Voyage No. .....

Port of Loading: NEW ORLEANS, LOUISIANA.

Shipper: THE COLORADO FUEL & IRON CORPORATION. ON BOARD. B/L No. 144 1948.

Consignee: Order of THE NATIONAL CITY BANK OF NEW YORK, NEW YORK CITY, N. Y. or assigns.....

If consigned to Shipper's Order arrival notice to be addressed to .....

.....

(Without liability to carrier, see Clause 12 hereof)

Plaintiffs' Exhibit 4 (In Part).
Exhibit F to Dalton Deposition and Schedule AO to Plaintiffs' Exhibit 1.

Port of Discharge from Ship: BOMBAY, INDIA.

.....

(If goods to be transshipped at port of discharge):

Destination of Goods: .....

.....

(See Clause 11 hereof):

THE SCOPE OF THE VOYAGE IS DESCRIBED IN CLAUSE 3 HEREOF

PARTICULARS FURNISHED BY SHIPPER OF GOODS

Marks and Numbers	Quantity or Number of Pieces or Packages	Description of Goods	Gross Weight Pounds	Gross Weight Kilos	Measurement
MULKRAJ LUCKNOW VIA BOMBAY NOS. 1/3217 MADE IN USA	3,217	DRUMS CAUSTIC SODA 76% SOLID (N.Y. & L.) FREIGHT PREPAID REFERENCE: CP-136-A CONTRACT: #25 EXPORT DECLARATION #29555 IMPORT LICENSE: 416/48 9380/48	2294096#	1040595	
EX CARS: NP-20157 ACI-57292 RDG-105145 RI-147443 PA-101516 DRGW-67848 ATSF-8807 TNO-54912 TNO-54-988 NW-46060 NYC-121194 ATSF-145560 UP-187374 PENN-76053 CRP-22857 CBQ-35306 MILW-23045 NP-26993 WP-20437 RDG-106533 CRP-22877 PENN-65703 CO-9062 CNW-84234 EJE-60843 NKP-22110 IC-17421		FREIGHT PREPAID			

Plaintiffs' Exhibit 4 (In Part).
Exhibit F to Dalton Deposition and Schedule AO to Plaintiffs' Exhibit 1.

2294096# @ 21.50 per 2240 lbs. $22,019.23

FREIGHT TO BE PREPAID $22,019.23

IN ACCEPTING THIS BILL OF LADING the shipper, consignee and owner of the goods agree to be bound by all of its stipulations, exceptions, and conditions, whether written, printed, or stamped on the front or back hereof, any local customs or privileges to the contrary nothwithstanding.

IN WITNESS WHEREOF, the Master of the said ship has affirmed to THREE bills of lading, all of this tenor and date, ONE of which being accomplished, the others to stand void.

Dated at NEW ORLEANS, LA., SEP—3 1948.

For the Master

ISBRANDTSEN COMPANY, INC.
As Agents for the Master

By HANSEN & TIDEMANN, INC.
Per Pro: J. H. DALTON

Terms of Bill of Lading continued on back hereof

1. This bill of lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States of America, approved April 16, 1936, which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the Carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said Act. The provisions stated in said Act (except as may be otherwise specifically provided herein) shall govern before the goods

Plaintiffs' Exhibit 4 (In Part).
Exhibit F to Dalton Deposition and Schedule AO to Plaintiffs' Exhibit 1.

are loaded on and after they are discharged from the ship and throughout the entire time the goods are in the custody of the Carrier. The Carrier shall not be liable in any capacity whatsoever for any delay, non-delivery or misdelivery, or loss of or damage to the goods occurring while the goods are not in the actual custody of the Carrier. If this bill of lading is issued in a locality where there is in force a Carriage of Goods by Sea Act or Ordinance or Statute of a similar nature to the International Convention for the Unification of Certain Rules Relating to Bills of Lading at Brussels of August 25, 1924, it is subject to the provisions stated in such Act, Ordinance and rules thereto annexed which may be in effect where this bill of lading is issued.

(a) The Carrier shall be entitled to the full benefit of, and right to, all limitations of, or exemptions from, liability authorized by any provisions of Sections 4281 to 4286 of the Revised Statutes of the United States and amendments thereto and of any other provisions of the laws of the United States or of any other country whose laws shall apply.

* * * * * * * *

2. In this bill of lading the word "ship" shall include any substituted vessel, and any craft, lighter or other means of conveyance owned, chartered or operated by the Carrier used in the performance of this contract; the word "Carrier" shall include the ship, her owner, master, operator, demise charterer, and if bound hereby the time charterer, and any substituted carrier, whether the owner, operator, charterer, or master shall be acting as carrier or bailee; the word "shipper" shall include the person named as such in this bill of lading and the person for whose account the goods are shipped; the word "con-

Plaintiffs' Exhibit 4 (In Part).
Exhibit F to Dalton Deposition and Schedule AO to Plaintiffs' Exhibit 1:

signee" shall include the holder of the bill of lading, properly endorsed, and the receiver and the owner of the goods; the word "charges" shall include freight and all expenses and money obligations incurred and payable by the goods, shipper, consignee, or any of them.

3. The scope of voyage herein contracted for shall include usual or customary or advertised ports of call whether named in this contract or not, also ports in or out of the advertised, geographical, usual or ordinary route or order, even though in proceeding thereto the ship may sail beyond the port of discharge or in a direction contrary thereto or return to the original port, or depart from the direct or customary route, and includes all canals, straits and other waters. The ship may call at any port for the purposes of the current voyage or of a prior or subsequent voyage. The ship may omit calling at any port or ports whether scheduled or not, and may call at the same port more than once; may for matters occurring before loading the goods, known or unknown at the time of such loading and matters occurring after such loading, either with or without the goods or passengers on board, and before or after proceeding toward the port of discharge, adjust compasses, dry dock, with or without cargo aboard go on ways or to repair yards, shift berths, make trial trips or tests, take fuel or stores, remain in port, sail with or without pilots, tow and be towed, and save or attempt to save life or property; and all of the foregoing are included in the contract voyage.

. . . . . .

12. The port authorities are hereby authorized to grant a general order for discharging immediately upon arrival of the ship and the Carrier without giving notice either of

Plaintiffs' Exhibit 4 (In Part).
Exhibit F to Dalton Deposition and Schedule AO to Plaintiffs' Exhibit 1.

arrival or discharge, may discharge the goods directly they come to hand, at or onto any wharf, craft or place that the Carrier may select, and continuously Sundays and holidays included, at all such hours by day or by night as the Carrier may determine no matter what the state of the weather or custom of the port may be. The Carrier shall not be liable in any respect whatsoever if heat or refrigeration or special cooling facilities shall not be furnished during loading or discharge or any part of the time that the goods are upon the wharf, craft, or other loading or discharging place. All lighterage and use of craft in discharging shall be at the risk and expense of the goods. Landing and delivery charges and pier dues shall be at the expense of the goods unless included in the freight herein provided for. If the goods are not taken away by the consignee by the expiration of the next working day after the goods are at his disposal, the goods may at Carrier's option and subject to Carrier's lien, be sent to store or warehouse or be permitted to lie where landed, but always at the expense and risk of the goods. The responsibility of the Carrier in any capacity shall altogether cease and the goods shall be considered to be delivered and at their own risk and expense in every respect when taken into the custody of customs or other authorities. The Carrier shall not be required to give any notification of disposition of the goods.

* * * * * * * *

17. * * *

Whenever the value of the goods is less than $500 per package or other freight unit, their value in the calculation and adjustment of claims for which the Carrier may be liable shall for the purpose of avoiding uncertainties and difficulties in fixing value be deemed to be the invoice value, plus freight and insurance if paid, irrespective of whether any other value is greater or less.

Plaintiffs' Exhibit 4 (In Part)
Exhibit F to Dalton Deposition and Schedule AO to Plaintiffs' Exhibit 1.

18. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the Carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, such removal shall be prima facie evidence of the delivery by the Carrier of the goods as described in the bill of lading. If the loss or damage is not apparent the notice must be given within three days of the delivery. The Carrier shall not be liable upon any claim for loss or damage unless written particulars of such claim shall be received by the Carrier within thirty days after receipt of the notice herein provided for.

19. In any event the Carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after the delivery of the goods or the date when the goods should have been delivered. Suit shall not be deemed brought until jurisdiction shall have been obtained over the Carrier and/or the ship by service of process or by an agreement to appear.

. . . . . .

21. This Bill of Lading shall be construed and the rights of the parties thereunder determined according to the law of the United States.

. . . . . .

---

26. SPECIFIED DOCK DISCHARGE: If the carrier makes a special agreement, whether by stamp hereon or otherwise, to deliver the goods hereby receipted for at a specified dock or wharf at the port of discharge, it is mutually agreed that such agreement shall be construed to mean that the Carrier is to make such delivery only if, in the

Plaintiffs' Exhibit 4 (In Part)
Exhibit H to Dalton Deposition and Schedule AS to Plaintiffs' Exhibit 1.

sole judgment of the Master, the ship can safely under her own power, proceed to, lie at, and return from said dock or wharf, always afloat at any time of tide, and only if such dock or wharf is available to the ship immediately the ship is ready to discharge the goods and, that otherwise, the ship shall discharge the goods in accordance with Clause 12 of this bill of lading, whereupon Carrier's responsibility shall cease.

27. All agreements or freight engagements for the shipment of the goods are superseded by this bill of lading, and all its terms, whether written, typed, stamped, or printed, are accepted and agreed by the shipper to be binding as fully as if signed by the shipper, any local customs or privileges to the contrary notwithstanding. Nothing in this bill of lading shall operate to limit or deprive the Carrier of any statutory protection or exemption from or limitation of liability. If required by the Carrier, one signed bill of lading duly endorsed must be surrendered to the agent of the ship at the port of discharge in exchange for delivery order.

Exhibit H to Dalton Deposition and Schedule AS to Plaintiffs' Exhibit 1.

• • • • • • • •

ON BOARD

Ship: S/S HAWAIIAN. Voyage No. .....

Port of Loading: NEW ORLEANS, LOUISIANA.

Shipper: THE COLORADO FUEL & IRON CORPORATION. ON BOARD. B/L No. 45 1948.

Consignee: Order of THE NATIONAL CITY BANK OF NEW YORK, NEW YORK CITY, N. Y. or assigns. .....

If consigned to Shipper's Order arrival notice to be addressed to .....

Plaintiffs' Exhibit 4 (In Part)
Exhibit H to Dalton Deposition and Schedule AS to Plaintiffs' Exhibit 1.

.....

(Without liability to carrier; see Clause 12 hereof)

Port of Discharge from Ship: BOMBAY, INDIA.

.....

(If goods to be transshipped at port of discharge):

Destination of Goods: .....

.....

(See Clause 11 hereof):

THE SCOPE OF THE VOYAGE IS DESCRIBED IN CLAUSE 3 HEREOF

PARTICULARS FURNISHED BY SHIPPER OF GOODS

Marks and Numbers	Quantity or Number of Pieces or Packages	Description of Goods	Gross Weight Pounds	Gross Weight Kilos	Measurement
MULKRAJ LUCKNOW VIA BOMBAY NOS. 3218/4799	1,582	DRUMS CAUSTIC SODA 76% SOLID (N.Y. & L.)	1128282#	511785	
		FREIGHT PREPAID			
		REFERENCE: CONTRACT: 25 IMPORT LICENSE 416/48 9380/48			
EX CARS: NW-43896 NYC-161752 DLW-51503 MILW-716875 IHB-10296 NYC-175844 PENN-105144 ITC-6499 NH-33292 NP-26590 PM-82979 PENN-78106 G..-31427 LN-15134					

FREIGHT PREPAID

FARRELL SHIPPING CO. INC. (BROKERS) EJA

Plaintiffs' Exhibit 4 (In Part)
Exhibit H to Dalton Deposition and Schedule AS to Plaintiffs' Exhibit 1.

1128282# @ 21.50 per 2240 lbs $10829.49

FREIGHT TO BE PREPAID $10829.49

IN ACCEPTING THIS BILL OF LADING the shipper, consignee and owner of the goods agree to be bound by all of its stipulations, exceptions, and conditions, whether written, printed, or stamped on the front or back hereof, any local customs or privileges to the contrary nothwithstanding.

IN WITNESS WHEREOF, the Master of the said ship has affirmed to 3 bills of lading, all of this tenor and date, ONE of which being accomplished, the others to stand void.

Dated at NEW ORLEANS, LA., SEP—3 1948

For the Master

ISBRANDTSEN COMPANY, INC.
As Agents for the Master

By HANSEN & TIDEMANN, INC.
Per Pro: J. H. DALTON

The stipulations, exceptions and conditions, appearing on this Bill of Lading are identical with those printed supra as part of B/L No. 144.

Plaintiffs' Exhibit 5 (In Part).

(Kacocha Deposition)

(3) CHARLES A. KACOCHA, called as a witness on behalf of the defendant American-Hawaiian Steamship Company, being first duly sworn by the Notary Public, testified as follows:

Direct Examination by Mr. Tillinghast:

Q. What is your full name, Captain? A. Charles Albert Kacocha.

Q. Where do you reside? A. 776—18th Avenue, San Francisco, California.

Q. Are you a seafaring man? A. Yes, sir.

* * * * * * * *

Q. By whom were you employed in 1948? A. American-Hawaiian Steamship Company.

Q. Are you still employed by the American-Hawaiian Steamship Company? A. Yes, sir.

Q. How long have you been employed by the American-
(4) Hawaiian Steamship Company? A. Since 1930.

Q. During 1948 were you attached to one of the vessels of your employer? A. Yes, sir.

Q. What vessel was it? A. Master of the "S/S Hawaiian".

Q. And as master you were in command of that ship, is that correct? A. That's right.

Q. Prior to August, 1948, will you describe the employment of the vessel? A. The voyage just before August was to South Africa on a charter for the Farrell Lines.

Q. When did that voyage terminate and where, Captain? A. At New York some time in July, I believe, 1948.

Q. Is July your best recollection? A. Yes, sir.

Plaintiffs' Exhibit 5 (In Part).
Charles A. Kacocha—For Defendant, American-Hawaiian Steamship Company—Direct.

Q. Did you contemplate operating the ship again after the ship was at New York in July, 1948? A. Yes, sir, I believe so.

Q. Did you have anything to do with her future employment at that time? A. I did, but at the close of that voyage I had requested leave for one voyage to get some very necessary dental work done.

Q. Did you have any reason to believe that the ship would not be able to engage in that prospective (5) employment after July? A. No, sir.

Q. Did you have any difficulties with your officers or crew? A. None.

Q. Were you advised by anyone on board that there was a possibility that the crew or the officers might go on strike? A. No, not at that time, no, sir.

Q. At any time? A. No. We had during the course of the Farrell Line voyage heard something about labor disturbance on the Pacific Coast. It had every indication of being on the verge of settlement or would be settled.

We were used to hearing talk of that sort frequently in the past years.

Q. In other words, that type of situation was not unusual? A. No, sir.

Q. You have stated that you laid off for a voyage in order to have some dental work done, isn't that correct? A. Yes, sir.

Q. Did you thereafter rejoin your ship? A. I did, yes, sir.

Q. When did you rejoin it? A. About the 8th or 9th of December.

Q. 1948? A. 1948.

Q. Where was the ship? A. At New Orleans.

Plaintiffs' Exhibit 5 (In Part).
Charles A. Kacocha—For Defendant, American-Hawaiian Steamship Company—Direct.

Q. Was she at a dock or was she at anchor? (6) A. I rejoined her in the stream.

Q. Before she went to the dock? A. Before she went to the dock.

Q. And you resumed your capacity as master, is that true? A. Yes, sir.

Q. Do you recall what occurred after you rejoined your vessel at New Orleans? A. When I rejoined her preparations were under way to get up steam.

Q. Do you know if this is the first time since the strike that the vessel had steam up? A. I feel pretty sure it was, yes, sir.

Q. Then what happened after you got up the steam on the vessel? A. And then arrangements were made by the agents at New Orleans for us to return to the dock and resume cargo loading operations.

Q. Do you remember the names of those agents, please? A. Yes, sir, Hansen & Tidemann.

* * * * * * * * *

(7) * * * Q. Would you describe what transpired after you docked at New Orleans at this time, to the best of your recollection, Captain? A. We resumed cargo loading operations which meant reloading all vehicles that had been pushed inside the shed out of the way which were not loaded when the strike took place.

The seamen's strike delayed this cargo loading.

* * * * * * * * *

(10) * * * Q. What day did you sail from New Orleans, Caption? A. I would have to look in the log book for

Plaintiffs' Exhibit 5 (In Part).

Charles A. Kacocha--For Defendant, American-Hawaiian Steamship Company—Direct.

that. I think it was the same morning the cargo was completed here.

Q. Would you be kind enough to refer to the log, Captain? A. Yes, sir, she sailed at 6:33—departure, 6:33, December 19th.

Q. 1948? A. 1948.

Q. What are you referring to, Captain, for your source of information? A. The smooth deck log.

Q. Is that log kept in the ordinary course of ship's business? A. Yes, sir, it is.

Q. And does it record events as they transpire? A. Yes, sir.

Q. Is it customary to keep a log book on the ship? A. Yes.

Q. Did you sign those pages? A. Yes, sir, I did.

Mr. Tillinghast: I ask that the log book be marked for identification.

(Log book above referred to was marked Defendant American-Hawaiian Steamship Company Exhibit A for identification, July 17, 1953, I.H.S.)

(11) Q. To what port was the caustic soda we have been discussing destined? A. It was for Bombay.

. . . . . .

Plaintiffs' Exhibit 5 (In Part).

Charles A. Kacocha—For Defendant, American-Hawaiian Steamship Company—Direct.

(18) * * * Q. Can you state what date you arrived at Bombay, Captain? A. No, sir. I would have to look in the log book. It seems to me it was the latter part of February or the early part of March, but I would rather consult the log book.

Q. Do that, please. A. (Referring to log book) According to the log book, we arrived at Bombay, off Bombay Light Vessel, 6:15 A. M., February 25, 1949.

Q. Did you dock, Captain, at Bombay? A. We docked at Bombay, yes, sir.

Q. On what date? A. We docked at Bombay on February 28th, 11:20 A. M.

Q. Had you discharged any cargo when you were at anchorage, Captain? A. No, sir.

Q. Did you discharge all your Bombay cargo at that wharf? A. At the dock. While at anchor we were awaiting a berth. The harbor was very crowded and (19) ships had to wait their turn.

Q. You berthed as soon as you were notified? A. Yes, sir.

Q. Making reference to Isbrandtsen Exhibit A for identification, would you be kind enough to tell us whether the caustic soda which was discharged, was discharged at Bombay? A. Yes, it was.

Q. Do you recall seeing that cargo in stow before she was discharged? A. I saw some of it, yes, sir.

Q. What was its condition, if you recall? A. My recollection of it is it was very good. In fact, some of the people commented that because it had been in the ship for quite awhile they expected that some of the drums may have been eaten away from the contents, which was not so.

Plaintiffs' Exhibit 5 (In Part).

Charles A. Kacocha—For Defendant, American-Hawaiian Steamship Company—Direct.

My recollection of the caustic soda was that it was in good shape. I didn't see it all, however.

Q. Were you on the ship most of the time the vessel was in Bombay? A. I was on board nearly all of every day.

* * * * * * * *

(20) Q. When did you finish discharging, Captain? A. All Bombay cargo was out of the vessel at 8:30 P. M., March 12, 1949.

* * * * * * * *

Log of the S. S. Hawaiian Voy. 6 1/4 Date Sept 2 1940 From 4th Wharf 3 Towards Westwego La.

HOUR	KNOTS	COURSES	WINDS	SEA	BAR.	THERMOMETER AIR WET	THERMOMETER AIR DRY	THERMOMETER WATER	LOOKOUTS	RUNNING LIGHTS WHEN LIGHTED	RUNNING LIGHTS WHEN EXT.	WATCH OFFICER	REMARKS
A.M. 1													Mate Wiate & H Purdy on duty. No cargo worked during night. Frequent inspection made about ships
2													
3												0700	Stevedores resume loading #1-2-4-5 holds.
4			Sly 2		2996	71	73					0800	F.H. Purdy, mate on, relieved by ships officer
5												0730	Stevedores ceased loading & covered up all hatches due to rain.
6												8:00 AM	Stevedores resumed loading cargo 8:00 AM Stevedores K.O. work because of rain.
7													
8			Sly 2		2993	75	77		Draft 0800			9:30 AM	Rain stops Stevedores resume loading #1-2-4-5
9									F 13.11			11:05	Rain, stevedores cover up hatches & K.O.
10									A 21.09				
11									m 20.04				
12													
P.M. 1	11:50		Log Book sent ashore in care of Mrs L E. WRIGHT. American-Hawaiian Lawyer & Photostat log entries pertaining to injuries to Longshoremen Aug 27 1940 in Houston									1:00 PM	Four (4) gangs resume Loading #1-2-4-5 hatches.
2												*3:00 PM	All Stewards department left ships to attend union meeting & did not return to ships at any hour of this day
3												5:30 PM	T G Williams night mate on duty.
4												6:00 PM	Knock off all day gangs for supper.
5												6:00 PM	Shut (3) mate gangs resume loading #2,4,5 hatches Combo Basra cases, chassis in all Lower holds.
6	10:10		Log returned by W E Wright Sept 7/48.									10:30 PM	Finish #2 L/H stack "Bessie" in #2 L.T.D. (cases)
7									Draft 1500			12:00 M.N.	Knock off all gangs for supper
8									F 19.01			12:00 Mid.	J A Williams, mate watch relieved by F.H. Purdy. Day ends partly cloudy. Light Drizzle.
9									A 23.09				
10									m 21.05				
11													
12			SE2		2938	75	77						

COURSE AND DISTANCE	LAT. BY OBS.	LONG. BY OBS.	LAT. BY ACCT.	LONG. BY ACCT.	DIST. PER LOG	CURRENT	VARIATION	DEVIATION	BEARING AND DISTANCE AT NOON

J W Mann MASTER

MATE

19 48 From 4th Wharf 3 Towards Wellington Ka. (Page 137A - Sheet 2)

NING LIGHTS

N ED	WHEN EXT.	ATCH OFFICER	REMARKS
			Chief Mate J H Pendy on duty. No cargo worked during night. Frequent inspections made about ship
			0700 Stevedores resume loading #1-2-4-5 holds.
			0800 F.H. Pendy, relieved, relieved by ships officers
			0730 Stevedores ceased loading secured up all hatches due to rain.
			8.00 Am Stevedores resumed loading cargo. 8.00 Am Stevedores N.W.
			work because of rain.
			9.30 H Rain stops. Stevedores resume loading #1-2-4-5
			11.05 Rain, stevedores secure up hatches & N.W.

	1.00 Pm	Four (4) gangs resumed Loading #1-2-4-5 hatches.
	3.00 Pm	All Stewards department left ship to attend union meeting & did not return to ship at any hour of the day
	5.00 Pm	T G Williams night mate on duty.
	6.00 Pm	Knock off all day gangs for supper.
	6.30 Pm	Shut (3) mate gangs resume loading #2,4,5 hatches Loading Bales cases, chassis in all Lower holds.
	10.30 Pm	Finish #2 C/H start "Bess" in #2 L T D (Cases)
	12.00 mid	Knock off all gangs for supper
	12.00 mid.	J A Williams, mate mate relieved by F.H. Pendy. N.M. Day ends partly cloudy. Light Breeze.

CURRENT	VARIATION	DEVIATION	BEARING AND DISTANCE AT NOON

J W Mace MASTER

MATE

4

Log of the S. S. Hawaiian Voy. 6 Cw Date Sept 3 1948 From Wharf #3 Towards Wellington Ka. (P

HOUR	KNOTS	COURSES	WINDS	SEA	BAR.	THERMOMETER AIR WET	THERMOMETER AIR DRY	THERMOMETER WATER	LOCKOUTS	RUNNING LIGHTS WHEN LIGHTED	RUNNING LIGHTS WHEN EXT.	WATCH OFFICERS	REMARKS
A.M. 1													F.H. Hardy, night watch, on duty.
2												1st AM	Four (4) gangs rec'd loading "Bravo" in #1, 2, 4, 5 hatches
3													inspection made of vessel & found in good order
4			Dly 2		2987	73	76					3rd AM	Steward's department aboard. Discharged their personal g
5												3-5 AM	Stewards department ashore & definately on strike
6												6 AM	Stewardess N.O for breakfast - 6 AM light rain set
7												5th AM	Duty relieved by ships officers
8			NE 3		2986	72	74					8.25 AM	Four (4) gangs resumed loading #1, 2, 4 & 5 hatches
9												9th AM	Knocked off all gangs because of rain. Hatches covered & Ge
10	10 Sm	Vessel off hire this date. Fuel on Board 13,660 Bbls											by
11		and 95 tons of Water											
12	10.30 AM	Undermanned deck crew (complete) ashore. Unlicensed engine										10.30 AM	Vessel off hire - stopped loading cargo.
		crew except firemen ashore with baggage in sympathy										10.30 AM	Sailors & engine ships in sympathy with Steward Dept. re
P.M. 1		with Stewards Dept. and hereby declared desertion											men on engine room & deck crew left.
2	5.30 pm	Foreman cabin and baggage - declared desertion										12.30 AM	Twenty (20) men (long shore men) reporting ship
3	1st pm	Cutter mooring lines, put out Booms & hatches opened during										12.00 noon	Knock off for lunch.
4		morning.										1.30 pm	Twenty (20) men stood on loading perishables & Vegetable
5	2nd pm	Mr. Wright & Miss Williams of Tenebrieg Gyeong, aboard to take										4th PM	all perishables & vegetables off ships. stevedores away
6		statement of Master, Ch Eng. and Chief Officer. Cadet at 5 PM										5-30 pm	Plant shut down.
7													Heavy winds continuous - heavy rains, thunderstorms ev
8		5PM Draft											Hurricane approaching New Orleans.
9		F 29 06										12th Mid. P.M.	Storm Warning
10		A 24 04											all hatches battened down, lines doubled up & ships si
11		M 21 11											against hurricane.
12													

Gangway Watchmen.
4 PM to 10 PM W L MORRIS
10 PM to 12 M E J LIVANOAIS

COURSE AND DISTANCE	LAT. BY OBS.	LONG. BY OBS.	LAT. BY ACCT	LONG. BY ACCT.	DIST. PER LOG	CURRENT	VARIATION	DEVIATION	BEARING AND DISTANCE AT NOON

J. H. Marr MAST

8

RUNNING LIGHTS WHEN LIGHTED	RUNNING LIGHTS WHEN EXT.	WATCH OFFICER	REMARKS
			F. H. Purdy, night watch, on duty.
		1[00] A.m.	Four (4) gangs receiving loading "Beans" in #1, 2, 4, 5 hatches. Receiving compartments made of wood & found in good order
		3[00] A.m.	Steward's department aboard. Receiving their personal effects.
		3[45] A.m.	Stewards department ashore & definately on strike
		6[00] A.m.	Stewards N.O. for breakfast - 6 [00] A.m. light rain set in.
		5[30] A.m.	Purdy relieved by ships officers
		8[25] A.m.	Four (4) gangs receiving loading #1, 2, 4 & 5 hatches
bly		9[00] A.m.	Knock off all gangs because of rain. Hatches covered. Gangs standing by
engine		10[30] A.m.	Vessel off hire. Stopped loading cargo.
standby		1030 A.m.	Sailors leave ship in sympathy with Steward Dept. with Steward men in engine room leave & depart vessel.
		10 30 A.m.	Twenty (20) men (long shoremen) receiving ship
shoring		12[00] noon	Knock off for lunch.
		1[00] P.m.	Twenty (20) men start receiving perishable & Vegetable
s to take		4[00] P.m.	all perishables & vegetables off ships. ships going away
s P.m.		5[30] P.m.	Plant shut down.
			Day ends continuous heavy rains, hurricane winds, — Hurricane approaching New Orleans.
Sailors men		12[00] Mid. P.M.	Storm following
el.			all hatches battened down, lines doubled up & ships secured
ds			against hurricane.

LOG	CURRENT	VARIATION	DEVIATION	BEARING AND DISTANCE AT NOON

J. W. Mann MASTER

MATE

5.

Plaintiff's Exhibit 18 (In Part).

SMOOTH DECK LOG
(Sept. 1, 2 and 3, 1948; 3 Sheets)

(See opposite ☞)

* * * * * * * *

Note

Page 135a is in three sheets:

Sheet 1 is on Card 7;
Sheets 2 and 3 follow this exposure.

Defendant Isbrandtsen's Exhibit B.

ACTUAL SCHEDULE

S.S. HAWAIIAN, Voyage 1

Account No.	*Journal*	*Arrival Date*	*Port*	*Sailing Date*
			New York	8/19/48
3012	J 2 A/S 80 (1949)	8/27/48	Houston	8/29/48
2985	2 " 56 "	8/30/48	New Orleans	12/19/48
2838	3 " 70 "	12/21/48	Tampa	12/24/48
3148	3 " 109 "	1/23/49	Port Said	1/23/49
3733	8 " 79 "	2/ 5/49	Kummit	2/ 6/49
3470	6 " 87 "	2/11/49	Abadan	2/13/49
		2/13/49	Khorramshahr	2/14/49
3733	8 " 79 "	2/15/49	Basra	2/16/49
		2/19/49	Bahrein	2/20/49
3378	6 " 10 "	2/25/49	Bombay	3/13/49

Defendant Isbrandtsen's Exhibit H.

New Orleans, Louisiana
December 10, 1948

Messrs. Isbrandtsen S.S. Company
c/o Hansen & Tideman, Agents
Carondelet Building
New Orleans, Louisiana

Gentlemen:

S.S. HAWAIIAN

Confirming our various telephone conversations of yesterday, the above vessel is, in accordance with all terms and conditions of Charter Party, hereby retendered as ready in all respects to resume loading at TPEP, Westwego Docks, as of redocking time at Westwego, 6:30 PM, December 9, 1948.

Very truly yours,

AMERICAN-HAWAIIAN STEAMSHIP COMPANY
STRACHAN SHIPPING COMPANY, AGENTS
By W. A. KLEIN JR.

WAK:sg

Received:
For and on behalf of
Isbrandtsen S.S. Company
Date:
Time:

Hansen & Tideman, Agents

By:

Defendant Isbrandtsen's Exhibit I.

CERTIFICATE OF LOADING

No. A-17344

(See opposite ☞)

Defendant Isbrandtsen's Exhibit J.

CERTIFICATE OF LOADING COVERING SPECIFIC CARGO

(See opposite ☞)

No. S 2286

CERTIFICATE OF LOADING COVERING SPECIFIC CARGO

BUREAU OF INSPECTION

—OF—

The Board of Underwriters of New York

New Orleans, La., DECEMBER 29, 19 48

This is to Certify, *That in connection with the loading of the specific cargo hereinafter mentioned the* AM. S.S. "HAWAIIAN" *whereof* C. A. KACOCHA *is Master, of* 3835 *Net Tons Measurement, built at* PHILADELPHIA PA. *in* 1919, *bound for* PERSIAN GULF AND INDIA *has been under the inspection of the undersigned at this port from time to time during the course of the loading of the undermentioned cargo only; that the stowage of such cargo, so far as it came under the observation of the undersigned, was in accordance with the rules of* The Board of Underwriters of New York.

THIS CERTIFICATE IS NOT A CERTIFICATE OF SEAWORTHINESS AND RELATES ONLY TO THE FOLLOWING CARGO:

FWD. 576 DRUMS ETHYL COMPOUND

AFT. 424 DRUMS ETHYL COMPOUND

LASHED AND SHORED, CRIBBED TO THE SATISFACTION OF THE SURVEYOR.

UNDERDECK CERTIFICATE ISSUED: A-17344

Draft of water loaded, ft. in. *forward,* ft. in. *aft.* *Freeboard,* ft. in.

MEAN DRAFT ft. in.

J. C. Campbell *Surveyor.*

This Certificate is issued on the conditions that, while the Officers and Committee of the Board use their endeavors to insure that the functions of the Board are properly executed, neither such Officers nor such Committee, nor the Board are under any circumstances whatsoever to be held responsible for any inaccuracy in any report or certificate issued by the Board or its surveyors, or for any omission, default, or negligence of the surveyors or other employees or representatives of the Board

Note

Page 139a is on
Card 7